

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAN GRAY,

PLAINTIFF,

VS.

CABELA'S INCORPORATED

AND

BBK ENTERPRISES, INC.,

DEFENDANT AND

THIRD-PARTY PLAINTIFF,

VS.

CTI INTERNATIONAL, INC.

THIRD-PARTY DEFENDANT.

CAUSE NO.
4:06-CV-985 (CEJ)

THE ORAL DEPOSITION OF

ALBERT ANSALDO

AUGUST 27, 2007

ORAL DEPOSITION of ALBERT ANSALDO,
produced as a witness at the instance of the
Third-Party Defendant CTI International, Inc., and
duly sworn, was taken in the above-styled and
numbered cause on the 27th day of August, 2007, from

9:05 a.m. to 2:04 p.m., before TAMMY ELLIS, CSR, in and for the State of Texas, reported by stenographic method, at the Law Offices of Prins & Arnwine, 4940 Broadway, Suite 108, San Antonio, Texas 78209, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties hereto that a transcript copy of the deposition of ALBERT ANSALDO shall be sent to TODD A. PRINS for the purpose of obtaining the signature of the witness thereon before any notary public.

Exhibits Continued

- 10 ... Four-page document to Billy from 112
Albert with drawings and handwritten notes
Bates-stamped CTI000066 through CTI000069
11 ... Three-page document with drawings and 114
handwritten notes Bates-stamped CTI000025
through CTI000027
12 ... Three-page document to Tom Gallagher 161
from Albert Ansaldo dated 3/22/02
Bates-stamped CTI000022 through CTI000024
13 ... Six-page document to Billy from Arla 161
dated 12/20/01 Bates-stamped CTI000060
through CTI000065

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EXHIBITS

NUMBER	DESCRIPTION	PAGE	MARKED
8	Two-page document to Billy Wong from BBK Enterprises, Inc., dated July 14, 1999, Bates-stamped CTI000001 and CTI000002	107	
9	Three-page document to Billy Wong from Arla dated 8/06/99 Bates-stamped CTI000003 through CTI000005	111	

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Continued

Appearances Continued

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ALSO PRESENT:

ALBERT ANSALDO,
The Witness; and

TAMMY ELLIS,
Certified Shorthand Reporter.

Now, for the record, I know you've
given the court reporter your address before we were
on the record, but officially what is your business
address?

A. 119 Bobby Lou, San Antonio, Texas, 78218.

Q. And what business is that, sir?

A. It is a distribution business of hunting.

Q. And what's the name of it?

A. BBK Hunting Systems, Limited.

Q. All right. And what is your position with
BBK Hunting Systems, Limited?

A. I'm the owner.

Q. All right. And do you have -- Have you
given yourself a title as the owner?

A. President.

Q. All right. Are there any other officers of
the company?

A. One.

Q. Who is that?

A. My wife.

Q. And what is her title?

A. Vice President/Secretary.

Q. All right. And her first name is?

A. Luanne.

Q. When was BBK Hunting Systems formed?

ALBERT ANSALDO,
the witness, having been first duly cautioned and
sworn to tell the truth, the whole truth, and
nothing but the truth, testified as follows:

EXAMINATION

BY MR. SANDERS:

Q. State your name, please.

A. Before we go any further in this depo, I
would like to have it notified that I have a hearing
impairment and I am -- I have dyslexia, so please
give me time to think of the question that you're
giving me and to answer it and to speak loudly.

And if I seem to be answering you
back in a loud voice, it's because I can't hear very
well with this impairment, so I'm ready to go.

Q. All right. Please state your name.

A. Albert Ansaldo.

Q. And, Mr. Ansaldo, as we go forward today,
any time you want to take a break, you say so, we'll
take a break. If you don't understand what any of
the attorneys are asking you, just tell them and
they will make it more clear, hopefully.

A. Yes, sir.

Q. And take all the time you need to answer
the question. That's not a problem.

A. I believe it was formed in 2004, if I'm --
or 2005. I really couldn't give you an actual date
when it was formed.

MR. PRINS: Keep going.

(Todd Prins left the
proceedings at this time.)

Q. (By Mr. Sanders) All right. When did --
Well, first of all, what is the business of
BBK Hunting Systems?

A. It's a distributor of hunting stands.

Q. Anything besides hunting stands?

A. No, sir. Feeders.

Q. Okay.

A. Hunting products.

(Todd Prins re-entered the
proceedings at this time.)

Q. (By Mr. Sanders) And when did BBK Hunting
Systems actually commence doing business?

And the distinction I'm trying to
make here is a company might be formed but it may be
a year before it actually starts doing business.

What I'm trying to get at is when
did BBK Hunting Systems actually start conducting
business?

A. At that point I cannot give you that exact

1 date.
 2 Q. Was it prior to 2007?
 3 A. Yes, it was.
 4 Q. Was it prior to 2006?
 5 A. Yes, it was.
 6 Q. You're not able to say then whether it was
 7 in '04 or '05?
 8 A. Correct.
 9 Q. Does BBK Hunting Systems manufacture the
 10 product that it sells?
 11 And by "manufacture," I mean do you
 12 own a factory? Does the company own a factory?
 13 A. No, sir. My company does not own a
 14 factory. Everything is subcontracted out using --
 15 through an agent.
 16 Q. All right. So basically BBK Hunting
 17 Systems buys -- the product it sells, it buys that
 18 product from someone else?
 19 A. Correct.
 20 Q. Okay. Has that always been true for all
 21 the time BBK Hunting Systems has been in business?
 22 A. Correct.
 23 Q. I'm -- I'm trying to talk loudly. I don't
 24 want to be too loud.
 25 A. No. You're perfect.

1 Q. So tell me if I'm --
 2 A. No. You're perfect.
 3 Q. Okay.
 4 A. Your monotone is very -- is great.
 5 Q. Prior to or contemporaneous with,
 6 whichever, BBK Hunting Systems being in business,
 7 did you own a company known as BBK Enterprises?
 8 A. Inc., yes, sir.
 9 Q. BBK Enterprises, Inc.?
 10 A. Yes, sir.
 11 Q. All right. And as we go through today, can
 12 we just agree if I use the word "Enterprises," we
 13 know we're talking about BBK Enterprises, Inc. If I
 14 use the word "Hunting," then we know we're talking
 15 about the current company.
 16 A. LTD, Limited.
 17 Q. Limited. Okay.
 18 When, as best you can recall, was
 19 Enterprises, Inc., incor -- or formed?
 20 A. In the year 1990, I believe. '90 or '91.
 21 Q. And at that time were you the president of
 22 the company?
 23 A. Yes, sir.
 24 Q. And was your wife the vice president?
 25 A. No, sir.

1 Q. Were there any other officers besides you
 2 in 1991?
 3 A. Yes, sir.
 4 Q. Who was that?
 5 A. Steve Jones.
 6 Q. Did he have an ownership interest?
 7 A. That, he did.
 8 Q. And what percentage?
 9 A. 50 percent.
 10 Q. Did there come a point where you bought
 11 Mr. Jones's interest out?
 12 A. Yes, sir.
 13 Q. When was that?
 14 A. Approximately in 1997 to '98.
 15 Q. All right. And after you bought Mr. Jones
 16 out, were you or you and your wife the sole owner of
 17 Enterprises, Inc.?
 18 A. Yes, sir.
 19 Q. And at that point your wife became an
 20 officer of the company?
 21 A. Correct.
 22 Q. Now, let's start then once you and your
 23 wife were the sole owners of Enterprises, Inc., at
 24 that point in time what was the business of
 25 Enterprises, Inc.?

1 A. Purchasing portable ground blinds from CTI
 2 and distributing hunting stand -- hunting blinds.
 3 Q. Okay. Blinds only at that point?
 4 A. Blinds only, yes, sir.
 5 Q. Okay. Was there any other -- Besides
 6 purchasing blinds, hunting blinds, from CTI and --
 7 and distributing them, was there any other business
 8 that Enterprises, Inc., was doing back at the time
 9 when you first took full ownership of the company?
 10 A. Other than public shows, Texas Trophy
 11 hunting shows and small dealers, that is all.
 12 Q. Okay. Did you expand the business into
 13 other fields at some point after that; in other
 14 words, beyond hunting blinds?
 15 A. Yes.
 16 Q. When did that start?
 17 A. 1998.
 18 Q. Okay. And what business did you expand
 19 into?
 20 A. Tree stands.
 21 Q. So beginning at some point in '98,
 22 Enterprises, Inc.'s, business or principal business
 23 was hunting blinds and tree stands?
 24 A. Correct.
 25 Q. And then you had those little sideline

1 things you were telling me about?

2 A. Correct.

3 Q. Okay. And at that point in time when you
4 expanded into tree stands, did you and your -- were
5 you and your wife the sole owners of the company?

6 A. Correct.

7 Q. At what point -- Well, let me ask this. Is
8 Enterprises, Inc., still in business?

9 A. No, sir.

10 Q. At what point in time did Enterprises,
11 Inc., stop actively conducting business?

12 A. I believe in the period of 2004.

13 Q. All right. Now here's what I want to see
14 if you can narrow down for me.

15 At some point in 2004, Enterprises,
16 Inc., stopped actively conducting business, correct?

17 A. Correct.

18 Q. At some point in 2004, Hunting, Limited,
19 started actively conducting business, correct?

20 A. Correct.

21 Q. Tell me was there any space in time between
22 Enterprises ceasing doing business and Hunting
23 beginning doing business or did that happen
24 simultaneously?

25 A. I believe it happened simultaneously.

1 Q. Okay. Now, at the time -- let's say two
2 days before Enterprises, Inc., ceased doing
3 business, just to pick a time, essentially what were
4 the assets of Enterprises, Inc.?

5 A. Zero.

6 Q. Okay. And I'm not actually asking for a
7 valuation so much as were there any assets --

8 A. No, sir.

9 Q. -- of any kind?

10 So you didn't have any inventory?

11 A. No, sir.

12 Q. Any accounts receivable?

13 A. Over time, yes, but we could not collect
14 them.

15 Q. All right. But some accounts receivable
16 existed on paper at least?

17 A. Correct.

18 Q. All right. Any accounts payable?

19 A. No.

20 Q. All right. Any orders in place that had
21 either -- well, that had not yet been filled?

22 A. No.

23 Q. So let me see if I can summarize. The
24 status of Enterprises, Inc., a few days before it
25 actively ceased business is it had no inventory, it

1 had no orders in hand, it had some accounts

2 receivable on paper at least and it had no -- no
3 outstanding debt?

4 A. Correct.

5 Q. Did it have a lease on office space?

6 A. Yes. At that time, yes.

7 Q. What was the office -- the address of that
8 office space?

9 A. I do not know it.

10 Q. Okay. How much time was left to run on it,
11 roughly?

12 A. It was on a monthly basis with the
13 landlord.

14 Q. Okay. Did -- Did you -- Did Enterprises,
15 Inc., either own or have a lease on warehouse space?

16 A. Never owned.

17 Q. All right. Did it have an existing lease
18 on warehouse space?

19 A. Verbal, monthly.

20 Q. Okay. And who was the owner of that
21 warehouse?

22 Let me just ask: Was it you or
23 your wife?

24 A. No. Nobody.

25 Q. Any entity controlled by you or your wife?

1 A. No.

2 Q. When Hunting, Inc., started doing business,
3 okay, did it -- were the accounts receivable that
4 Enterprise, Inc., had transfer to Hunting, Inc. --

5 A. To --

6 Q. -- to Hunting, Limited?

7 A. No.

8 Q. All right. Did Enterprise, Inc., then just
9 continue to try to collect those accounts
10 separately?

11 A. I believe it did.

12 Q. And was that kept as separate books from
13 Hunting?

14 A. Of course.

15 Q. And who was your accountant handling that
16 at the time?

17 A. My wife.

18 Q. Your wife. Okay.

19 As a bookkeeper or is she trained
20 as an accountant?

21 A. She's a full-blooded accountant.

22 Q. Okay.

23 A. CPA also.

24 Q. Now, when Hunting, Limited, commenced doing
25 business, did it have -- use the same office space

1 that Enterprises, Inc., had been using?
 2 A. Yes.
 3 Q. And what was that address?
 4 A. 119 Bobby Lou.
 5 Q. The same one as now?
 6 A. Correct.
 7 Q. Is that your home, by the way?
 8 A. No.
 9 Q. Is it like next door to or connected to
 10 your home?
 11 A. No.
 12 Q. What is your home address?
 13 A. 204 Bentley Manor, San Antonio, Texas.
 14 Q. The warehouse space that Enterprises, Inc.,
 15 had been using, did Hunting, Limited, use that same
 16 warehouse space?
 17 A. Correct.
 18 Q. And does it still today?
 19 A. It does.
 20 Q. Back before Enterprises, Inc., ceased doing
 21 business, who was its distributor for the hunting
 22 blinds?
 23 I'm sorry. Who was its vendor?
 24 Who did you get them from?
 25 A. CTI.

1 Q. And what about for tree stands?
 2 A. CTI.
 3 Q. Any other vendor that Enterprises right
 4 before it ceased doing business -- any other vendor
 5 that Enterprises was getting hunting blinds from?
 6 A. BBK Enterprises, Inc., CTI supplied the
 7 entire inventory of that product line.
 8 Q. Same thing for tree stands?
 9 A. Same thing for tree stands.
 10 Q. And there were no other products really you
 11 were selling, right?
 12 A. No, sir.
 13 Q. No, sir, there weren't or --
 14 A. Oh, no, sir. There was not.
 15 Q. Sometimes that comes out funny on paper.
 16 A. I understand.
 17 Q. Once Hunting, Limited, started doing
 18 business, right away as it started doing business,
 19 who was its supplier for blinds?
 20 A. No one.
 21 Q. Okay. Who -- Who did you get the blinds
 22 from that you were selling?
 23 A. CTI. I had a large inventory of defective
 24 product and at that point could not sell any more,
 25 so I'm still sitting on them.

1 Q. Okay. I'm not --
 2 A. I understand.
 3 Q. I'm not communicating here.
 4 Once -- Once Hunting, Limited,
 5 started doing business --
 6 A. Correct.
 7 Q. -- it started selling blinds to its
 8 customers, didn't it?
 9 A. No.
 10 Q. All right. So has Hunting, Limited, ever
 11 sold blinds?
 12 A. No.
 13 Q. Okay. Hunting --
 14 A. Yes.
 15 Q. Go ahead.
 16 A. Well, I'm just getting confused, the
 17 Limited and the Enterprises.
 18 Enterprises, Inc., always sold the
 19 product. At the point when the company closed down
 20 in my warehouse is all the inventory, all the
 21 product sitting there that is defective that we
 22 cannot sell.
 23 Q. Okay. Well, let's go back there for a
 24 minute then.
 25 So when Enterprises, Inc., closed

1 down business, it did have some inventory in a
 2 warehouse?
 3 A. Correct.
 4 Q. All right. And is this the same warehouse
 5 that you had that verbal month-to-month lease on?
 6 A. Yes, it is.
 7 Q. What address is that?
 8 A. You asked me earlier.
 9 Q. You can't remember?
 10 A. I can't remember, no.
 11 Q. Okay.
 12 A. I can just tell you it's on Cross Country.
 13 Q. That's the name of a street?
 14 A. Yes, sir.
 15 Q. Here in San Antonio?
 16 A. Yes, sir.
 17 Q. All right. So, in any event, when
 18 Enterprises, Inc., closed down business, it had some
 19 inventory in this warehouse; and was the inventory
 20 entirely of blinds or were there other products,
 21 too?
 22 A. Blinds.
 23 Q. So only blinds?
 24 A. Blinds and a product called a deer gambrel.
 25 That is another item that CTI made for us.

1 Q. Okay. And approximately, either in number
2 of blinds or by value of blinds, how much inventory
3 was there?

4 A. Cost, about \$15,000.

5 Q. Okay. And these gambrels, about how much
6 inventory was there?

7 A. Approximately \$4,000.

8 Q. All right. Do those -- Are those still in
9 the warehouse?

10 A. Yes, sir.

11 Q. So that approximately \$15,000 cost of
12 blinds is still sitting in the warehouse?

13 A. Correct.

14 Q. And the approximately 4,000 cost of
15 gambrels are still in the warehouse?

16 A. Correct.

17 Q. Are they carried on the books of
18 Enterprises?

19 A. I believe, yes.

20 Q. Who is currently paying the rent on that
21 warehouse space?

22 A. BBK Hunting Systems, Limited.

23 Q. Now, I want to go back to where I think we
24 were.

25 When Hunting -- BBK Hunting,

1 Limited, started doing business, okay, what -- what
2 were the product or products that it was selling
3 when it started doing business?

4 A. Ladder stands.

5 Q. And who was the supplier to BBK Hunting,
6 Limited, of ladder stands?

7 A. A company in China called Winters.

8 Q. W-I-N-T-E-R-S?

9 A. Correct.

10 Q. Okay. Does it remain the supplier --

11 A. No.

12 Q. -- today?

13 A. No.

14 Q. But you're still selling ladder stands,
15 correct?

16 A. Correct.

17 Q. About how long before you started selling,
18 before Hunting, Limited, started selling these
19 stands made by Winters -- about how long before that
20 had you lined up Winters as a supplier to you?

21 A. Probably three months.

22 Q. Were there any other supp -- When BBK
23 Hunting, Limited, started doing business, did it
24 have any suppliers of stands other than Winters?

25 A. No.

1 Q. Now, BBK Hunting, Limited, does it now sell
2 something other than stands?

3 A. A wooden box.

4 Q. Okay. Does that have a name other than
5 wooden box?

6 A. A camp house. That's what we call it.

7 It's a portable hunting box, a shooting house.

8 It's -- It's hard to explain, but it's a wooden box
9 that KD's down and comes in a package.

10 Q. When -- About when did that become a
11 product line that Hunting, Limited, started selling?

12 A. This year.

13 Q. All right. So it just started in '07?

14 A. Correct.

15 Q. Other than tree stands and the wooden
16 box --

17 A. Yes, sir.

18 Q. -- any other product line that Hunting,
19 Limited, sells?

20 A. None. That's it.

21 Q. And has -- Have those been the only two
22 products that Hunting, Limited, has ever sold?

23 A. Other than the shooting stick. I mean,
24 it's not a tree stand. It's an accessory item. We
25 have -- like the deer gambrel, which it's still in

1 inventory, the shooting stick; that's all.

2 Q. That's it then?

3 A. Correct.

4 Q. Okay. Did -- By the time that Enterprises,
5 Inc., was ceasing business, were there any employees
6 of the company other than you and your wife?

7 A. When it ceased to exist?

8 Q. Well, let's say in the last month before it
9 ceased to exist.

10 A. No. There was nobody. We had -- We let go
11 of the gentleman that was working at the time when
12 BBK Enterprises existed and we had to close the
13 door --

14 Q. Okay.

15 A. -- and we had to let him go.

16 Q. Before you let him go, then there was just
17 one other employee?

18 A. Correct.

19 Q. All right. Was he like a warehouse man or
20 what?

21 A. He was my assistant, like assistant
22 manager, traveled to shows and did -- went to China
23 on my behalf at times.

24 Q. Okay. When -- When Enterprises, Inc., was
25 actively in business, did it actually warehouse

1 anything or did it simply do the paperwork of buying
 2 from its vendor and having the vendor ship directly
 3 to a customer?
 4 A. For this incident for Cabela's, I never
 5 received a product at all in my door.
 6 Q. Okay. But I'm asking generally, did
 7 Enterprises, Inc., ever warehouse items?
 8 A. Yes. Yes.
 9 Q. Did you have employee or employees that
 10 worked in the warehouse?
 11 A. No.
 12 Q. So it was you and your assistant and your
 13 wife that would take care of any unloading into the
 14 warehouse and loading back up out of the warehouse?
 15 A. You're looking at him.
 16 Q. Okay. Does Hunting, Limited, have any
 17 employees other than you and your wife?
 18 A. My secretary, Arla May.
 19 Q. Okay. Was she a secretary too at
 20 Enterprises?
 21 A. Correct.
 22 Q. Was -- Was there ever a period of time
 23 where she was let go or laid off, or did she stay
 24 with you throughout the whole time?
 25 A. She stayed with me throughout the whole

1 time.
 2 Q. I want to go back and -- and -- in time now
 3 and talk about Enterprises, Inc., and its business
 4 with CTI.
 5 I think you told me that you got
 6 into -- Enterprises, Inc., got into the tree stand
 7 business in, what, '98 or '99, did you say?
 8 A. '98, yes.
 9 Q. 1998. All right.
 10 That was before you had started
 11 doing any business with CTI on tree stands, correct?
 12 A. Correct.
 13 Q. Were -- Was BBK -- and let's -- from now on
 14 I'm only going to be talking about BBK Enterprises.
 15 All right?
 16 A. I understand.
 17 Q. So was BBK Enterprises, back in 1998,
 18 selling tree stands on its own like down here in
 19 Texas under its own name?
 20 A. Yes.
 21 Q. Okay. Did -- You didn't have any retail
 22 outlets, I take it?
 23 A. No.
 24 Q. So you would sell to other stores that were
 25 retailers?

1 A. Correct.
 2 Q. And were -- were the tree stands back at
 3 that time in '98, did they actually have some kind
 4 of label or tag on them that said BBK?
 5 A. Correct.
 6 Q. Where were -- Where were you getting those
 7 since you weren't manufacturing them yourself?
 8 A. Mexico.
 9 Q. Was there a company?
 10 A. Yes.
 11 Q. What was its name?
 12 A. I want to say -- it's been so long -- it's
 13 Luz De -- Mexico De La Luz. It was a light factory
 14 and converted into a steel plant, and they still
 15 kept the name.
 16 Q. What town was it in?
 17 A. Nuevo Laredo.
 18 Q. And what I want to find out now is for
 19 those stands that you were getting from that -- that
 20 factory in Mexico back in 1998, did that factory
 21 come up on its own with tree stands and you started
 22 buying from it or did they manufacture those tree
 23 stands to your design?
 24 A. They were already manufacturing tree stands
 25 at the point I walked in that door.

1 Q. Okay. Before you walked in that door in
 2 Nuevo Laredo, were you -- was Enterprises, Inc.,
 3 selling tree stands?
 4 A. No.
 5 Q. So was this a new product line for
 6 Enterprises when you walked in the door in
 7 Nuevo Laredo?
 8 A. Correct.
 9 Q. And you walked in that door and the factory
 10 there in Nuevo Laredo had tree stands that they were
 11 making on their own?
 12 A. Correct.
 13 Q. You looked over the tree stand?
 14 A. Correct.
 15 Q. And at some point after walking in that
 16 door, you got in the business of buying tree stands
 17 from that factory and selling them at least here in
 18 Texas under the BBK name?
 19 A. Correct.
 20 Q. Do you know who designed those tree stands?
 21 A. The tree stand was a knockoff from a
 22 current manufacturer on the market named Wahoo at
 23 that time, Wahoo tree stands.
 24 Q. W-A-H-O-O?
 25 A. Yes.

1 Q. Name a tree stand after a fish.
 2 A. I understand.
 3 MR. PRINS: You're not going to get
 4 a lot of fish from it, I wouldn't think, but...
 5 THE WITNESS: That was the name of
 6 the company.
 7 Q. (By Mr. Sanders) All right. Did you start
 8 buying and then selling those tree stands from that
 9 Mexican factory as is or did you require them to --
 10 to change or modify the design in some way?
 11 A. As is.
 12 Q. Okay. When -- Was there some point when
 13 you approached Cabela's about buying tree stands
 14 from BBK Enterprises?
 15 A. Yes.
 16 Q. Approximately when?
 17 A. 1999.
 18 Q. And do you remember what portion of that
 19 year it happened in that you approached Cabela's the
 20 first time?
 21 A. My first time, I believe it was in the
 22 early part of April.
 23 Q. And was it Mr. Gallagher that you
 24 approached?
 25 A. Tom Gallagher.

1 Q. Okay. Where did that meeting take place?
 2 A. Sidney, Nebraska; corporate.
 3 Q. Cabela's corporate headquarters?
 4 A. Yes, sir.
 5 Q. Did you take a sample of the tree stand
 6 with you that you were wanting them to buy from you?
 7 A. That, I did.
 8 Q. And was it the tree stand that you were
 9 getting from Nuevo Laredo?
 10 A. Yes, sir, it was.
 11 Q. All right. And did Cabela's agree during
 12 that meeting to start buying from you, or did it
 13 take a little bit of time in salesmanship?
 14 A. No, sir. They bought the stand. They
 15 wanted to view the factory in Mexico prior to
 16 committing, but they -- within a less than two weeks
 17 period, they were down from corporate, into
 18 Nuevo Laredo to view the facility and to see if it
 19 would be able to maintain their business.
 20 Q. Okay. So the sequence then is early April,
 21 roughly, of 1999, you go to Cabela's, meet with
 22 Mr. Gallagher, you have a tree stand with you, you
 23 make the sales pitch, right?
 24 A. Correct.
 25 Q. And Mr. Gallagher tells you during that

1 meeting they'd like to sell the stand but they want
 2 to see the factory first?
 3 A. Correct.
 4 Q. So within a couple of weeks, you and
 5 Mr. Gallagher go to the factory in Nuevo Laredo?
 6 A. Yes, sir.
 7 Q. After that, did -- right away after that,
 8 did Cabela's start buying stands from you?
 9 A. Yes.
 10 Q. Did Cabela's require or state that they
 11 were requiring any modification in that stand
 12 design?
 13 A. At that point, no.
 14 Q. At that point is what I'm talking about,
 15 so...
 16 A. Everything was the same.
 17 Q. All right. And then, in fact, did you
 18 start selling that particular tree stand to
 19 Cabela's?
 20 A. That, I did.
 21 Q. When that occurred -- and by "that," I mean
 22 you've gone to corporate headquarters for Cabela's,
 23 then you've gone to the factory with Mr. Gallagher
 24 in Nuevo Laredo. About how long after that trip to
 25 Mexico before you actually started having product

1 shipped to Cabela's?
 2 Was it a week, a month? What would
 3 you guess?
 4 A. It was several months that we had to go
 5 into the process of gathering product, material,
 6 ordering, and go into the production.
 7 Q. Okay. Explain --
 8 A. Orders were cut.
 9 Q. Explain what you mean about gathering
 10 product material.
 11 A. Well, the gentleman -- the gentleman at the
 12 factory would order his steel, order the rope,
 13 getting everything lined up to come in to meet at
 14 the time that Cabela's wanting their stands to start
 15 to be delivered to their facility in their
 16 warehouse.
 17 Q. I think I see the point, so let me ask it
 18 this way.
 19 You're at the factory with
 20 Gallagher. Okay? Did he have some point in time
 21 after that when he said, "This is when we're first
 22 going to want to start receiving the tree stands"?
 23 A. Yes.
 24 Q. When was that?
 25 A. July.

1 Q. Okay.
 2 A. Because their August -- their archery book
 3 where this product goes into comes out the first of
 4 August, I believe.
 5 Q. All right. So what he told you is "We've
 6 got a target date of July to start getting these
 7 stands from you"?
 8 A. Or sooner, yes, sir.
 9 Q. Okay. And it was between April and July
 10 that the factory was starting to gear up to be able
 11 to deliver?
 12 A. Correct.
 13 Q. Okay. Now, when the factory then first
 14 started producing those stands in July of 1999,
 15 approximately, did they come with assembly
 16 instructions?
 17 A. Yes, they did.
 18 Q. Who had put together those assembly
 19 instructions?
 20 A. I did.
 21 Q. Okay. And --
 22 MR. SANDERS: I hope we're not
 23 disturbing your --
 24 MR. PRINS: Oh, no, no, no.
 25 MR. SANDERS: Okay.

1 Q. (By Mr. Sanders) Had -- I should ask this.
 2 Before you started selling to Cabela's, I know you
 3 were selling at least in some places with the BBK
 4 name on the stand, right?
 5 A. Correct.
 6 Q. Did those come with assembly instructions?
 7 A. Yes.
 8 Q. And had you put those assembly instructions
 9 together?
 10 A. That, I did.
 11 Q. So the assembly instructions that existed
 12 when you were only selling under the BBK name, did
 13 those change when you started selling them to
 14 Cabela's?
 15 A. Yes.
 16 Q. And how -- Tell me how it came about that
 17 they changed.
 18 A. Well, Cabela's wanted their name on that
 19 product and they put -- we sent our instructions to
 20 them. They approved them. We put the Cabela's
 21 name, address, information on it. They approved
 22 them, and we sent them back into production.
 23 Q. Okay. So, really, then the only difference
 24 between the instructions that existed when you were
 25 only selling under the BBK name from when you

1 started selling to Cabela's -- the only change in
 2 those instructions was the instructions now said
 3 Cabela's and had its address and its phone number,
 4 Cabela's information?
 5 A. Up to that point, yes.
 6 Q. At that point in time, right.
 7 A. Yes.
 8 Q. Okay. Now, I'm going to show you, if I can
 9 find it... Mr. Gallagher's deposition was taken
 10 last week, as I -- I believe you know.
 11 A. I understand.
 12 Q. And there were a series of instructions
 13 that were identified. And -- And to be fair to you,
 14 I'm going to tell you that Mr. Gallagher said that
 15 Exhibit Number 5 -- there you see the 5
 16 (indicating)?
 17 A. Right.
 18 Q. -- that Exhibit Number 5 instructions were
 19 the very first ones that were used and that
 20 Exhibit 4 instructions came about later
 21 (indicating).
 22 So you take your time and look at
 23 these for a moment and then I'm going to ask you if
 24 you agree with that.
 25 A. No. I don't agree with them.

1 Q. Okay. Now, let's -- let's first turn --
 2 Well, let's do it this way. You have in front of
 3 you Exhibit 5 and Exhibit 4.
 4 A. Yes.
 5 Q. Okay? This is Exhibit 5 (indicating).
 6 That's Exhibit 4 (indicating).
 7 Do either of those look like the
 8 instructions that were first supplied with the
 9 product when you first started selling it to
 10 Cabela's?
 11 A. This one does (indicating).
 12 Q. Okay. And I probably had you confused with
 13 numbers. Because you're pointing at Exhibit
 14 Number 5, correct (indicating)?
 15 A. Correct.
 16 Q. And, in fact, Mr. Gallagher said that
 17 Exhibit Number 5, this one, was the first one used
 18 (indicating).
 19 A. Correct.
 20 Q. So you agree with that?
 21 A. That, I do.
 22 Q. Okay. And so Exhibit Number 5 are the
 23 instructions that you had drafted back when you were
 24 first -- Let me start over because I don't -- Strike
 25 that.

1 Exhibit Number 5, I notice, does
2 not have anybody's name on it, and it may just be
3 cut off someplace when it was copied. But as far as
4 what we see on Exhibit Number 5, are these the
5 instructions that you drafted and were in use back
6 when you were just selling the ladder as BBK ladder
7 (indicating)?

8 A. It -- It -- It is.

9 Q. Except it may be missing the name.

10 A. Well, I understand that. But also they are
11 not the original instructions.

12 Q. Okay.

13 A. And --

14 Q. Go -- Explain what you mean by that.

15 A. Can I have a break for a second?

16 Q. Yeah.

17 MR. PRINS: Sure.

18 THE WITNESS: Let's talk.

19 MR. PRINS: Okay.

20 THE WITNESS: Can I have this,
21 please (indicating)?

22 MR. SANDERS: You can take both of
23 them if you'd like.

24 (Recess taken.)

25 Q. (By Mr. Sanders) Okay. Now, let's go back

1 to where we were. And to set the timeline, we know
2 that in April of 1999, you were talking with
3 Cabela's for the first time about Cabela's buying
4 tree stands from you, right?

5 A. Correct.

6 Q. And then we know that Cabela's agreed to
7 start buying tree stands from you and told you that
8 they'd like to start having them delivered by July
9 of '99?

10 A. In that time.

11 Q. In that time frame, roughly?

12 A. Yes, sir.

13 Q. Okay. Now, in that April to July of 1999
14 time frame and by the time you first started
15 delivering the 15-foot tree stands to Cabela's, as I
16 understand it, Exhibit 5 was the instruction
17 materials that were being used with the stand except
18 maybe with the name of Cabela's above the -- the
19 15-foot ladder reading?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Okay. And these were ones that you had
24 drafted at some point prior to July of 1999?

25 A. No, they're not.

1 Q. Okay. Explain where they came from.

2 A. They came from Billy, CTI.

3 Q. All right. Now you weren't doing business
4 yet with Billy, right?

5 A. At that point -- I'm going to explain this
6 to you. Okay?

7 Q. Now answer my question and then you can
8 explain.

9 Were you doing business with Billy
10 Wong for tree stands in April of 1999?

11 A. We were discussing it.

12 Q. Were you buying tree stands from CTI in
13 April of 1999?

14 A. Not in April.

15 Q. What about in July of 1999?

16 A. I believe so.

17 Q. Okay. What about the Mexican factory, were
18 you buying them from the Mexican factory in July of
19 1999?

20 A. That, I was.

21 Q. All right. And the tree stand that you
22 showed Mr. Gallagher was from the Mexican factory?

23 A. Correct.

24 Q. And the tree stand that you looked at in
25 the Mexican factory was the Mexican factory's tree

1 stand?

2 A. Correct.

3 Q. And the tree stand that Mr. Gallagher
4 agreed to buy from you in April of 1999 was the one
5 from the Mexican factory?

6 A. Correct.

7 Q. Okay. And the tree stand you started
8 shipping in approximately July of 1999 to Cabela's
9 was from the Mexican factory?

10 A. Correct.

11 Q. All right. And that was the same one you
12 had been selling under the BBK name prior to that?

13 A. Correct.

14 Q. All right. Now, the one that -- then that
15 you had been selling under the BBK name and that you
16 started shipping to Cabela's in July of 1999 came
17 with assembly instructions?

18 A. Correct.

19 Q. And those were assembly instructions that
20 you had drafted?

21 A. Correct. And approved by Cabela's.

22 Q. And approved by Cabela's. Fine.

23 And those assembly instructions
24 were Exhibit 5 (indicating)?

25 A. No.

1 Q. Okay. Where are they, the ones that you
2 then gave to Cabela's in July of 1999?
3 A. They are exactly of -- the same as these
4 without the 7 and 3 being misplaced. And at that
5 point, I have no other -- no other copy of that
6 instruction because in the period of 1999, Billy
7 Wong started my production. And if you would see on
8 these instructions stated, there's a CTI number on
9 this one, which is the very first one for Billy
10 Wong's production (indicating).
11 Q. Show me the CTI number.
12 A. (Witness complies.)
13 Q. Sir, I put that on there.
14 A. You put that on there?
15 Q. I did.
16 A. Are you sure?
17 Q. I think so.
18 A. Well, you better make sure.
19 Q. So your story then is that the assembly
20 instructions that you had drafted --
21 A. Yes.
22 Q. -- all right, and that you were using with
23 BBK and that you were providing to Cabela's in July
24 of 1999 are exactly like Exhibit 5 except for the
25 numbering that goes 1, 2, 7?

1 A. Correct.
2 Q. All right. And do you have a copy of that
3 anywhere?
4 A. No, sir. Not at my present time.
5 Q. All right. And if Mr. Gallagher has
6 testified that Exhibit 5 is exactly what you were
7 giving him, then you disagree with him?
8 A. Yes.
9 Q. Okay. Did there come a point in time where
10 the wording of Exhibit 5 of the instructions that's
11 Exhibit 5 changed in some way?
12 A. No, not the wording.
13 Q. All right. I'll show you Exhibit 4. I
14 want you to look at those and tell me if you think
15 they're different in some way.
16 A. Yes.
17 Q. Okay. Tell me the difference you find.
18 A. Well, it's the safety cross straps. This
19 in Exhibit 5 shows that there's no safety cross
20 straps that came out in the first year (indicating).
21 And in the second year, we put the
22 safety cross straps on here (indicating).
23 Q. All right. Now, if we look at both of
24 them, Exhibit 5 and Exhibit 4 both have a section
25 labeled "Contents of Your Box," correct

1 (indicating)?
2 A. Yes.
3 Q. Those are different, aren't they?
4 A. "Contents of Your Box," yes.
5 Q. Because in Exhibit 4, there are two
6 additional items listed as "Contents of Your Box"
7 that are not listed in Exhibit 5 (indicating).
8 A. Correct.
9 Q. And those items are H which says --
10 A. Safety cross strap.
11 Q. -- "two 12-foot webbings" --
12 A. Yes.
13 Q. -- correct (indicating)?
14 A. Correct.
15 Q. And Item I which says "two steel braces,"
16 correct (indicating)?
17 A. Correct.
18 Q. Okay. And Exhibit 4 also has an
19 illustration for Exhibit I showing the two steel
20 braces that Exhibit 5 does not have.
21 A. Correct.
22 Q. And that was because at some point in time
23 those items were added to the box.
24 A. No, sir.
25 Q. All right. Were they always in the box?

1 A. Yes, sir.
2 Q. All right. So Exhibit 5 -- When Exhibit 5
3 was used as instructions, the two steel braces and
4 the two 12-foot webbing straps were in the box, they
5 just weren't listed on the contents of the box?
6 A. No, sir. The 12-foot webbing, as it shows
7 in this photo, was never in this box because it was
8 never put in. And it wasn't -- This was an ad-on in
9 the following year (indicating).
10 And the other item that's in here
11 that's taken this up that replaces the two metal
12 straps are these two cables (indicating). The
13 cables are in here. They're not listed, but the
14 cables are shown in the photo where they go in place
15 as of this (indicating).
16 Q. Okay. Let's -- Since we're pointing and
17 talking, it won't come across --
18 A. Okay.
19 Q. -- in writing.
20 Let's do it this way. First on
21 Exhibit 5, at the bottom left-hand part of the page,
22 there's a heading that says "How to Assemble Your
23 Cabela's 15-Foot Ladder," correct (indicating)?
24 A. Correct.
25 Q. And you were pointing to underneath that,

1 the illustration that is at the top left-hand side.
 2 It's got a single platform-like piece, right
 3 (indicating)?
 4 A. Correct. It's a cable.
 5 Q. And there are two cables shown on that
 6 (indicating)?
 7 A. Correct.
 8 Q. All right. Those were items that were
 9 present at that point in time but not listed in the
 10 "Contents of Your Box" part?
 11 A. Correct.
 12 Q. All right. And you're saying that when
 13 Exhibit 4 was created, those cables no longer were
 14 in use, correct?
 15 A. Correct.
 16 Q. And they were replaced by what?
 17 A. J, the two metal bars right here
 18 (indicating).
 19 Q. All right. The two metal bars that are
 20 Item I in "Contents of Your Box" of Exhibit 4
 21 (indicating)?
 22 A. Correct.
 23 Q. Okay. And that's why Item I, those two
 24 metal bars, is not in Exhibit 5 (indicating).
 25 A. Correct.

1 Q. All right. Now, Exhibit 4 in the contents
 2 also has Part H, two 12-foot webbings (indicating).
 3 A. Correct.
 4 Q. Were 12-foot webbing straps included in the
 5 box that was shipped when Exhibit 5 was being used?
 6 A. No, sir.
 7 Q. Tell me when that change came about, when
 8 you started using or putting in the box the 12-foot
 9 webbings and the two steel braces.
 10 A. I believe the -- in the year 2000, we went
 11 to the solid braces and the webbing.
 12 Q. Okay. And that was in the year 2000. And
 13 that would mean the shipping of that was probably,
 14 what, in the July of 2000 time frame?
 15 A. Yes, sir.
 16 Q. And so production would have preceded July
 17 of 2000 by a few months?
 18 A. Yes, sir.
 19 Q. Okay. And so Exhibit 5 assembly
 20 instructions were modified to what we see in
 21 Exhibit 4 because of that change of contents of the
 22 box?
 23 A. Correct.
 24 Q. All right. Who made that change in
 25 Exhibit -- from Exhibit 5 to Exhibit 4? Did you do

1 that?
 2 A. Both Cabela's and I.
 3 Q. All right. You and Cabela's combined.
 4 And who -- who at Cabela's worked
 5 with you on that?
 6 A. Tom Gallagher.
 7 Q. Anybody else?
 8 A. At that time, Doug Zingula.
 9 Q. Anybody else?
 10 A. Not that I'm aware of.
 11 Q. All right. So the changes from Exhibit 5
 12 to Exhibit 4 took place sometime prior to July of
 13 2000?
 14 A. Correct.
 15 Q. And they were accomplished by a combination
 16 of you, Mr. Gallagher and Mr. Zingula?
 17 A. Correct. But there is -- You have --
 18 You're asking me a question that is actually prior
 19 to that, of 2000, when the corrections of those --
 20 how do I say -- These instructions here --
 21 Q. Number 5 you're pointing at.
 22 A. -- Number 5, are not the original
 23 instructions that came from the original BBK stand
 24 that was manufactured in Nuevo Laredo (indicating).
 25 These instructions --

1 Q. Number 5 again.
 2 A. -- Number 5, were modified when CTI was
 3 given the right to build the additional ladders and
 4 the remaining PO's, and CTI and the factory
 5 redesigned this ladder to come in a KD form, okay,
 6 to where we could get more in a container
 7 (indicating).
 8 So we basically took the basic
 9 outline of these instructions, put the modifications
 10 that CTI and the factory did for this product and
 11 created these instructions, approved by Tom
 12 Gallagher, and we sent these instructions over there
 13 and they were put in a box (indicating).
 14 Q. Okay. We're going to have to back up and
 15 start again then --
 16 A. Okay. Yes.
 17 Q. -- so we got all this.
 18 Let's go to April of 1999.
 19 A. Okay.
 20 Q. And you're at Cabela's and you've got a
 21 tree stand with you and it came from the Mexican
 22 plant.
 23 A. Yes, sir.
 24 Q. Okay. And that was -- that was the tree
 25 stand that somebody had designed and the Mexican

1 plant was already manufacturing?
 2 A. Correct.
 3 Q. And that's what Cabela's said they were
 4 going to buy?
 5 A. Correct.
 6 Q. And there were no modifications made to
 7 that design that the Mexican plant was
 8 manufacturing?
 9 A. Correct.
 10 Q. And that was the stand that you started
 11 shipping in approximately July of 1999?
 12 A. At the beginning.
 13 Q. Okay. That's the stand that you first
 14 started shipping to Cabela's in approximately July
 15 of 1999?
 16 A. Correct.
 17 Q. Does Exhibit 5 represent the assembly
 18 instructions that accompanied the stand in July of
 19 1999 coming from the Mexican plant (indicating)?
 20 A. No.
 21 Q. Okay. Where are those instructions?
 22 A. I have them -- I do not have them.
 23 Q. Okay. That -- That -- Okay. Let's make
 24 sure we --
 25 A. Okay. I do not have them at my present

1 time, the original instructions of that original one
 2 done in 1998.
 3 Q. All right. Do you know where they are at
 4 all?
 5 A. No, sir, I don't.
 6 Q. And if Cabela's says that Exhibit 5 was
 7 them, then you disagree (indicating)?
 8 A. I disagree to a point.
 9 Q. Okay. Tell me to what point.
 10 A. Okay. To the point to where the original
 11 stands that were coming out of Mexico, okay, were
 12 built in a solid piece. And I will explain this to
 13 you.
 14 The entire upper portion of this
 15 stand right here was welded together (indicating).
 16 This elbow -- see this elbow right here in
 17 Exhibit 5, that was all one piece and it was welded
 18 (indicating).
 19 In order for the Chinese factory at
 20 the time in mid 1999 when Mr. Wong was given a
 21 sample, the factory went in and designed this elbow
 22 to be able to make a box that was this tall because
 23 everything that was coming from the original Mexican
 24 factory was all built in one piece, welded, the --
 25 other than the cable, all this piece and the

1 foot plat -- I mean the seat platform, it was all
 2 welded together (indicating).
 3 When Mr. Wong was given the
 4 opportunity, which is --
 5 Q. We're going to get to Mr. Wong.
 6 A. -- with CTI --
 7 Q. I'm going to take this a piece at a time.
 8 A. Okay. They --
 9 Q. So you're saying then that what was shipped
 10 from the Mexican factory, we don't have the
 11 instructions?
 12 A. Correct.
 13 Q. All right. And you don't know where they
 14 are?
 15 A. No, I don't.
 16 Q. And so Exhibit Number 5 does not represent
 17 instructions that came with the product from the
 18 Mexican factory (indicating)?
 19 A. Correct.
 20 Q. Okay. And whatever instructions came with
 21 the product from the Mexican factory, those
 22 instructions you wrote?
 23 A. Yes.
 24 Q. Okay. Now, we move ahead.
 25 Did the instructions that you wrote

1 for the product that came from the Mexican factory,
 2 did those ever change during the time you were still
 3 getting product from the Mexican factory?
 4 A. They changed when Cabela's agreed to buy
 5 the CTI ladder.
 6 Q. Okay. But as long as you were getting the
 7 product from the Mexican factory, did those
 8 instructions change?
 9 A. No, sir. Not at all.
 10 Q. Okay. Now, there came a point where you
 11 had problems with delivery schedules or something
 12 like that from Mexico, right?
 13 A. Correct.
 14 Q. What were those problems?
 15 A. Just "Manana."
 16 Q. In other words, they were not able to
 17 deliver as promised?
 18 A. As promised.
 19 Q. Time-wise?
 20 A. Time-wise. And then the additional PO's
 21 that came on top of BBK Enterprises, Inc., from
 22 Cabela's.
 23 Q. You mean a volume problem, too? They
 24 couldn't produce the volume?
 25 A. Well, I was given one PO for the Mexican

1 factory. And when the catalogue came out, they
2 called me up and they said, "We're -- We
3 underestimated our volume of sales."

4 Q. Cabela's you're talking about?

5 A. Yes.

6 So when I had my meeting with them
7 and they told me what the volume was at that point,
8 I told them I couldn't do it in the Mexican factory.
9 And I had told them at that time that CTI, Billy
10 Wong, had a sample in his hand and that just out of
11 pure coincidence that that sample would be back at
12 my office.

13 When I came back from the meeting,
14 I looked at -- I looked at the ladder. The ladder
15 was pristine. It was a beautiful-made ladder. I
16 forwarded that ladder to Tom Gallagher for their
17 approval to have that ladder made in China. And for
18 the remainder of the PO's that was coming out of
19 China that -- that we had to fulfill in a certain
20 amount of -- period of days, they agreed for that
21 ladder.

22 So at that point we modified
23 them -- the drawings -- of the original BBK
24 instructions and that's what they came out.
25 Cabela's approved the modification of the ladder and

1 the instructions.

2 We forwarded that over to CTI to be
3 put in for the ladder stands. And when the ladders
4 came over, it seemed that the production of 2000 --
5 of '99 and the production of 2000 -- the only thing
6 changed was the differences of the parts and the
7 webbing in 2000 compared to '99, Exhibit 5
8 (indicating).

9 At that point CTI had done all
10 the -- we had -- we -- Cabela's approved them. We
11 did them. Cabela's approved them. We forwarded
12 them to CTI. And how they got to that situation in
13 numbers, I don't know.

14 Q. Okay. Now, let's break this down into
15 pieces.

16 A. Okay.

17 Q. So we're sometime after July -- We're in
18 '99?

19 A. Yes, sir.

20 Q. We're sometime past July and Cabela's is
21 coming to you and saying, "Gosh, we need more than
22 what we thought?"

23 A. Correct.

24 Q. About when did that happen?

25 A. I want to say August.

1 Q. Of '99?

2 A. Correct.

3 Q. And who was it from Cabela's that told you
4 this?

5 A. Tom Gallagher.

6 Q. Okay. Was this over the phone, person to
7 person, by a letter; how did it happen?

8 A. On the phone, "Get yourself up here
9 tomorrow. We have a problem."

10 Q. Okay. So August of '99, approximately
11 August of '99, Gallagher calls you on the phone,
12 says, "Get up here to Nebraska. We have a problem"?

13 A. Correct.

14 Q. So did you get up there to Nebraska?

15 A. Next day.

16 Q. All right. And so now you have a
17 face-to-face meeting with Gallagher?

18 A. Correct.

19 Q. Anybody else from Cabela's present?

20 A. All of them, the four kings.

21 Q. Well, I've -- I've never met a king in my
22 life, so tell me.

23 A. Well --

24 Q. Gallagher is one. Who else?

25 A. -- Doug Zingula, Brian somebody, and

1 another gentleman that I can't remember the name.

2 Q. Any description that would help Cabela's
3 counsel identify him?

4 A. No. I can't -- Brian. He's one of the top
5 ones. I'm --

6 Q. Okay.

7 A. I --

8 Q. So we've got a meeting in August of '99 at
9 Cabela's headquarters with Gallagher, Zingula, Brian
10 somebody and a fourth person?

11 A. Correct.

12 Q. Okay.

13 A. I believe Tom's assistant.

14 Q. Tom's assistant.

15 Tell me what they said to you at
16 that meeting.

17 A. "It's a hot item. We need more product.
18 Can you produce that in the Mexico factory?"

19 Q. Tell me what kind of volume they were
20 telling you they needed compared to what they had
21 originally told you.

22 A. My initial orders were -- were
23 approximately 15,000 ladders coming out of the
24 Mexican factory. That was my initial order. And
25 that's what I anticipated on building.

1 Q. Okay.
 2 A. Along with another item that this doesn't
 3 have to pertain to, but this is ladders.
 4 Q. Okay.
 5 A. When the catalogue -- When the archery
 6 catalogue came out several weeks after, they called
 7 me up and said, "Get up here." And then they said,
 8 "We need an additional 30,000 ladders to be here in
 9 90 days."
 10 Q. That's in addition to the first 15,000?
 11 A. Correct.
 12 Q. Okay.
 13 A. Okay? And I told them I could not produce
 14 those in the Mexican factory because of being so
 15 slow.
 16 Q. Okay. And they said what?
 17 A. They said, "You've got to do something. We
 18 can't lose sales."
 19 Q. All right. Did they tell you they were
 20 going to take your original order away from you?
 21 A. No.
 22 Q. They just said, "Do something?"
 23 A. "Please do something."
 24 And at that point in time, with my
 25 relationships with CTI, he -- Billy had been asking

1 me to send him a sample of the ladder to be able to
 2 quote against the Mexican factory.
 3 Q. Had you been buying some kind of product
 4 from Billy Wong, CTI, prior to August of '99?
 5 A. Yes.
 6 Q. What?
 7 A. Ground blinds.
 8 Q. Okay. Anything else besides ground blinds?
 9 A. Deer gambrels, steady shots, umbrellas.
 10 Q. All right. Umbrellas as in?
 11 A. Camouflaged umbrellas that were leftovers
 12 from the material cut from the ground blinds instead
 13 of throwing them away.
 14 Q. All right. So is this something you just
 15 put on the tree stand to keep the sun --
 16 A. No.
 17 Q. -- off of you?
 18 A. Umbrellas to put in your glove compartment.
 19 Q. Oh, a real umbrella?
 20 A. A real camouflaged umbrella.
 21 Q. Okay.
 22 MR. PRINS: You're getting too
 23 technical all of a sudden.
 24 Q. (By Mr. Sanders) So anyway, we're -- we're
 25 still back in August of 1999. You've had your

1 meeting at Cabela's. You've been told "Do
 2 something. Get us some more tree stands"?
 3 A. Correct.
 4 Q. All right. And you had a relationship with
 5 CTI on these other products?
 6 A. Correct.
 7 Q. And Billy was saying, "Send me a sample of
 8 a tree stand I can bid against"?
 9 A. Correct.
 10 Q. And did you do that?
 11 A. Yes, I did.
 12 Q. And so did you send him this Mexican tree
 13 stand?
 14 A. That, I did.
 15 Q. All right. About when was that? Still in
 16 August?
 17 A. No, sir. It was prior to August. It
 18 was -- oh, about August. June, July. In July.
 19 Q. Did you sending Billy this -- this sample
 20 tree stand precede your meeting with Cabela's where
 21 they said "Do something," or did it happen after
 22 that meeting?
 23 A. Precede.
 24 Q. Precede. Okay.
 25 And so you sent the sample tree

1 stand to Billy. And then you had this meeting with
 2 Cabela's where they said "Do something"?
 3 A. Correct.
 4 Q. Tell me, did you have a conversation with
 5 Billy Wong after that?
 6 A. Correct.
 7 Q. And was that in August?
 8 A. Same day.
 9 Q. Same day?
 10 A. Same day.
 11 Q. From Nebraska or were you back in
 12 San Antonio?
 13 A. I was in Nebraska calling them from my
 14 mobile cell phone.
 15 Q. All right. And what did you say to him?
 16 A. "Billy, where is that ladder stand that you
 17 basically have made?"
 18 He said, "The sample should be at
 19 your door" when I get back.
 20 Q. Okay. And so you got back to San Antonio?
 21 A. That, I did.
 22 Q. Was there a sample ladder stand?
 23 A. That, there was. That, there was.
 24 Q. Okay. And was the ladder stand all in one
 25 piece? Was it -- had to be assembled?

1 A. It's exactly in Exhibit 5-A (indicating).
 2 Q. Exhibit 5 (indicating)?
 3 A. Yes.
 4 Q. Okay. So did that ladder stand that Billy
 5 sent to you -- and that was waiting for you when you
 6 got back from Nebraska in August of '99?
 7 A. Yes, sir.
 8 Q. Now that ladder stand had to be assembled
 9 you said?
 10 A. Correct.
 11 Q. Did it have assembly instructions?
 12 A. No, it did not.
 13 Q. So it was just a bunch of pieces in a box?
 14 A. Correct.
 15 Q. Okay. If we were to look at the various
 16 pieces in Exhibit 5 --
 17 A. Yes, sir.
 18 Q. -- were those the pieces that were in the
 19 box (indicating)?
 20 A. Yes, sir.
 21 Q. So, in other words, they -- it did not have
 22 a webbing -- webbing --
 23 A. Two 12-foot webbings.
 24 Q. It did not have two 12-foot webbings. It
 25 did not have two steel braces. Instead, it had

1 these cables?
 2 A. Correct.
 3 Q. Okay. And was that like then what you were
 4 getting in Mexico except that it was in
 5 assembleable -- assembleable pieces?
 6 A. Correct.
 7 Q. Okay. So it was -- As best you could tell,
 8 was it exactly like the Mexican one except you had
 9 to assemble the pieces when Billy sent it to you?
 10 A. Correct.
 11 Q. Had you talked with Billy in advance about
 12 having one that was, as you call it, a KD, a
 13 knockdown?
 14 A. No, sir. They took it upon their own.
 15 Q. Okay. What did you do when you got back
 16 and you found this sample in pieces?
 17 A. I assembled it.
 18 Q. Trial and error or did it -- was it pretty
 19 simple to just look at and put together?
 20 A. It was simple to put together.
 21 Q. Okay.
 22 A. I assembled it. I put it up on the
 23 telephone pole out in front of the office, strapped
 24 it in, climbed up on it, put a load test to it, and
 25 then I put it back in the box the same day and I

1 sent it to Tom Gallagher overnight.
 2 Q. All right. You said you put a load test to
 3 it. Explain what you mean.
 4 A. I -- Once the ladder is up on the tree, we
 5 put a steel plate up on top of the foot platform and
 6 the seat platform and you add a straight direct pull
 7 down on the -- on the ladder and made it -- and we
 8 put 450 pounds of weight on it.
 9 The ladder didn't crumple or flex
 10 or anything, so I sent it to Cabela's.
 11 Q. Okay.
 12 A. It meets -- It meets the same strength
 13 requirements of the other.
 14 Q. All right. That's what I'm trying to get
 15 at. I'm not too articulate about it, but we'll get
 16 there. Okay?
 17 A. Okay.
 18 Q. So the point being then, this is the same
 19 kind of load test you had put on the Mexican stand
 20 to make sure that they were --
 21 A. Correct.
 22 Q. -- equivalent, correct?
 23 A. Correct.
 24 Q. And they were?
 25 A. They were.

1 Q. Okay. And having satisfied yourself with
 2 that, you put everything back in the box and sent it
 3 to Gallagher?
 4 A. Yes, sir.
 5 Q. Okay. And did you hear back from
 6 Gallagher?
 7 A. Immediately.
 8 Q. All right. What did Mr. Gallagher say?
 9 A. "They love it."
 10 Q. All right. Did he tell you if they'd done
 11 any kind of testing or anything else?
 12 A. At that point, no.
 13 Q. So they love it. What else? Anything
 14 more?
 15 A. "Can you meet our orders?"
 16 Q. And those orders were the additional 30,000
 17 within 90 days?
 18 A. Correct.
 19 Q. All right. What did you tell him?
 20 A. I said, "Tom, you have to give me some
 21 time. I have to correspond with Billy Wong, ask him
 22 if the factory is capable of building these ladders
 23 in the time period and how you want to handle -- Do
 24 you want to pick it up in China or do you want them
 25 delivered to your door?"

1 Q. And what did he say?

2 A. He said, "We want them delivered to our
3 door," and that's it. "Get them done."

4 So I talked to Mr. Wong. Mr. Wong
5 told me he would get back to me the following day
6 because at that time of the day it was night and
7 everybody was asleep and he was going to be talking
8 to his -- his brother-in-law, RayLyn, the company
9 they had formed over there.

10 And they came back to me and said,
11 "Not only will we get them to you, all of them, all
12 your orders, in 90 days, we will beat that 90 days
13 in order to get -- to get the business."

14 Q. Okay.

15 A. "To make you shine."

16 Q. When you got that sample box from the point
17 it was waiting for you --

18 A. Yes.

19 Q. -- when you got back to San Antonio, was
20 there any kind of, you know, letter, correspondence,
21 anything with it?

22 A. No.

23 Q. Had you gotten any e-mail about it?

24 A. At that time -- I don't think we were on
25 e-mail at that time.

1 Q. Okay. So basically this was all a verbal
2 conversation with Billy?

3 A. Correct.

4 Q. All right. When you had gotten word back
5 from Gallagher, "Yeah, we love it. See if you can
6 get them on time," did you have any kind of written
7 communication with Billy Wong saying, "Can you meet
8 this order," whatever?

9 A. No. It was all verbal.

10 Q. Okay. Now, obviously since this required
11 assembly, there had to be assembly instructions,
12 correct?

13 A. Correct.

14 Q. And you're telling me then that Exhibit 5
15 was the assembly instructions that came about for
16 this ladder (indicating)?

17 A. Correct.

18 Q. How did they come about?

19 A. I took them to a draftsman that did the
20 modifications.

21 Q. You said "took them." Took what?

22 A. Took the instructions from the original
23 BBK, which was almost verbatim other than this, than
24 having these parts all in one piece (indicating).

25 Instead of having, you know, A, B,

1 C, D, all the way to G, we might have just had E
2 because there was no additional parts that we have
3 to exhibit in this that were on the original
4 instructions because they were all welded in one
5 piece (indicating).

6 Q. Okay.

7 A. So we made the modifications on the
8 instructions from the original BBK instructions. We
9 forwarded them to Cabela's. They approved them.
10 They looked them over. And we forwarded them to
11 Billy Wong.

12 Q. Okay. Again, let's break it into pieces
13 and make sure I understand.

14 So you take the instructions that
15 were being used for the Mexican tree stand --

16 A. Correct.

17 Q. -- and you modified them in what you felt
18 was the appropriate way?

19 A. Correct.

20 Q. And what I want to get an understanding of
21 is between you and this draftsman that you were
22 talking about, what did you do and what did the
23 draftsman do?

24 A. Well, I basically brought him the parts and
25 laid it out and brought him the ladder and he drew

1 out the parts for the ladder and the instructions
2 that were modified from the Mexican factory to the
3 China factory.

4 Q. Okay. Who was the draftsman by the way?

5 A. It's been so long ago, I do not know his
6 name --

7 Q. Do you still --

8 A. -- and whether or not if he's in business
9 still today.

10 Q. Do you have any kind of documents,
11 paperwork, anything in your records that would
12 identify who that draftsman is? It could be
13 correspondence. It could be a bill from him. It
14 could be a payment to him.

15 A. It could be a payment. We'd have to go
16 back and look in files.

17 Q. All right.

18 MR. SANDERS: Do I need to make a
19 formal request, Todd, or will you --

20 MR. PRINS: No. I'll agree. We'll
21 take a look, see if we can find that.

22 THE WITNESS: Yeah. He's -- I'll
23 try to find him, see if he's --

24 MR. PRINS: Is he here in town?

25 THE WITNESS: Yeah. He's -- Last

1 time he was over off of Josephine Street.

2 MR. PRINS: Okay. Yeah. We'll see
3 what we can find out.

4 MR. SANDERS: Okay. So -- And so
5 it's clear, what I'd like is a name and any
6 communications with him, including drafts back and
7 forth, anything like that.

8 Q. (By Mr. Sanders) So you go to the
9 draftsman. You'd say, "Here are the instructions we
10 were using and here are the parts for this one that
11 has to be assembled"?

12 A. Correct.

13 Q. That's the starting point, correct?

14 A. Correct.

15 Q. He did the drawings that we see in
16 Exhibit 5 (indicating)?

17 A. He did, yes.

18 Q. Now, were some of the drawings in Exhibit 5
19 merely the same thing that had been in your original
20 instructions (indicating)?

21 A. Correct.

22 Q. So, for instance, if we look on the
23 right-hand side of the page where it's showing
24 putting a ladder against a tree, for instance, were
25 those part of the original drawings?

1 A. That was part of the original drawings.

2 Q. Okay. And the part that he would have
3 drawn then would be the part where it shows putting
4 pieces of a ladder together?

5 A. Correct.

6 Q. Okay. And then the actual wording as
7 opposed to the pictures or the drawing, did you do
8 all the wording or did the draftsman do part of the
9 wording?

10 A. I did the wording.

11 Q. All right. So this collaborative effort
12 then was the draftsman doing drawings of parts and
13 you are doing any changes in wording that needed to
14 be made from the original instructions?

15 A. Correct.

16 Q. Okay. And when you got it done, your
17 collaborative effort done, you sent that to
18 Gallagher?

19 A. Yes, sir, I did.

20 Q. And tell me what communication, if any, you
21 received in response from Gallagher.

22 A. I called -- I called him up because a lot
23 of it at that time was verbal and spoke with Tom,
24 asked him if he received the instructions, and he
25 said he did.

1 And I said, "Is there any
2 modifications that need to be done?"

3 And he said, "No. Everything is
4 fine. Go for it."

5 Q. Okay. When you sent them to him, was there
6 any kind of cover letter or note?

7 A. Might have been in a -- No. I mean just
8 "Tom, here's your instructions for the 15-foot
9 ladder," put them in an envelope and sent them on up
10 there.

11 Q. All right. Do you have any copy of any
12 letter, note, any communication you had with
13 Gallagher forwarding those instructions to him?

14 A. None. No, sir.

15 Q. How did you get word back from him they're
16 okay?

17 A. Verbal.

18 Q. No note, no letter, no fax, nothing back to
19 you from him?

20 A. Not that I -- Not that I know of at that
21 time, no.

22 Q. Okay. Now, the -- So -- So now you've
23 gotten the instructions done and you've already
24 placed your order, I take it, with CTI for these
25 extra 30,000 ladders?

1 A. Correct.

2 Q. Okay. Did you send the instructions off to
3 Mr. Wong?

4 A. Yes, I did.

5 Q. And did you send them with a cover letter
6 or a fax or a note or any -- any form of written
7 communication?

8 A. I believe I sent it to him in a letter -- I
9 mean in an envelope, you know, straight to his
10 address, "Here's the instructions," same as I did
11 Tom.

12 Q. Okay. So do you have then a copy of the
13 note or the letter or whatever you put with the
14 instructions when you sent them to Billy?

15 A. He should have them.

16 Q. No. I'm asking if you have them.

17 A. No, I do not.

18 Q. At some point CTI started shipping these
19 directly to Cabela's?

20 A. Correct.

21 Q. Were the instructions included in the box?

22 A. Yes, sir.

23 Q. Did you ask at any time for one box with a
24 ladder and instructions to be sent to you so that
25 you could check out what was going to Cabela's?

1 A. Not at that time.
 2 Q. Well, at some time did you?
 3 A. Not at that year. Not at all. Because
 4 they were --
 5 Q. Not in 1999?
 6 A. I don't receive -- I didn't receive any
 7 product from production. We sent samples over and
 8 the instructions went over there in one piece; and,
 9 no, I did not.
 10 Q. Okay. So in 1999 you did not receive any
 11 sample of what was actually being shipped from CTI
 12 to Cabela's?
 13 A. No. But we went over to the factory in
 14 China, Tom and I and Doug Zingula, and viewed the
 15 factory.
 16 Q. Okay. We're going to get to that. So
 17 since you mention it, when was it that you went
 18 to --
 19 A. After production.
 20 Q. Okay. But time-wise, was it in '99?
 21 A. No. I believe it was at the beginning of
 22 2000.
 23 Q. Okay. So before production for the 2000
 24 sales year started?
 25 A. Yes.

1 Q. Okay. And you went to the factory; Billy
 2 Wong was there also?
 3 A. Yes.
 4 Q. Did you identify any problems with the
 5 product that was being produced?
 6 A. At that time, no.
 7 Q. Did you inspect any of the product being
 8 produced while you were there?
 9 A. Yes.
 10 Q. Okay. And everything met with your
 11 satisfaction?
 12 A. Correct.
 13 Q. Any -- Any kind of -- I forget what you
 14 called it -- a load test or something?
 15 A. Yes. They all --
 16 Q. Did you do that there?
 17 A. They do that. We didn't actually view it,
 18 but they had done it, a load test, and we also bring
 19 the ladder stands in and have them tested at an
 20 independent testing firm at that point.
 21 Q. All right. That's that Scientific Testing
 22 Lab, I think it's called?
 23 A. Yes, sir.
 24 Q. Okay. Did you have anything to do with
 25 that, or was that all Cabela's?

1 A. I -- Cabela's. They paid for everything.
 2 Q. Okay.
 3 MR. PRINS: Why don't we take five
 4 here.
 5 MR. SANDERS: Sure.
 6 MR. PRINS: Seems like a good spot.
 7 MR. SANDERS: No problem.
 8 (Recess taken.)
 9 Q. (By Mr. Sanders) Okay. These 15-foot
 10 ladder stands that we've been talking about, isn't
 11 it correct that you actually designed that 15-foot
 12 ladder stand yourself?
 13 A. No, sir.
 14 Q. Didn't you take the Wahoo product that was
 15 on the market and redesign it yourself?
 16 A. Yes, sir. At the -- At the factory,
 17 Mexican factory.
 18 Q. All right. So you did take the Wahoo
 19 product --
 20 A. Modified it.
 21 Q. -- and you redesigned it, didn't you?
 22 A. Correct.
 23 Q. And the Chinese -- Once you started dealing
 24 with CTI, that Chinese company -- that Chinese
 25 factory they were coming from, you actually got

1 sample product in from time to time and tested it,
 2 didn't you?
 3 A. Yes, I did.
 4 Q. All right. And did you set up a quality
 5 assurance program at the factory in China?
 6 A. That, we did.
 7 Q. And you had the welded parts checked and
 8 tested there, didn't you?
 9 A. Yes, sir.
 10 Q. You'd open up boxes and inspect them just
 11 to make sure that everything was right?
 12 A. Yes, sir.
 13 Q. The quality control people in China, those
 14 were ones that you made sure were there and doing
 15 their job, right?
 16 A. They were there when I was there with Billy
 17 Wong.
 18 Q. Okay. Now, I think where we were at was in
 19 late '99 and how we -- how you started getting
 20 product from the Chinese factory and how Exhibit 5
 21 came about.
 22 Now, in the year 2000, I think you
 23 said, you went from these cables that we see in
 24 Exhibit 5 to the two 12-foot webbings and the two
 25 steel braces, right (indicating)?

1 A. Correct.

2 Q. How did it come about that you made those
3 changes in the design?

4 A. The factory, on building the cables and
5 doing the crimps -- the facility was not doing a
6 quality control program. So for safety measures, we
7 decided to go to the solid bar which would not allow
8 the -- the ladder to fold (indicating).

9 With the cables, this foot plate
10 would fold up and down, and over time we all felt
11 that it could cause -- could break, it could fail.

12 So by putting the -- the metal bars, it was a solid
13 fix, similar to the Wahoo ladder (indicating).

14 Q. So were you going back to what the Wahoo
15 had been?

16 A. Yes. But instead of being welded, it was
17 bolted.

18 Q. Now, when you said "We were concerned," I
19 want to know who the "we" is.

20 A. Cabela's and I.

21 Q. All right. So these -- this change from
22 the cable to the steel braces, that was a joint
23 decision with Cabela's?

24 A. Yes.

25 Q. And are we talking about Gallagher again or

1 someone else?

2 A. Gallagher and Doug Zingula.

3 Q. All right. Were there actual face-to-face
4 meetings with -- meeting or meetings with them on
5 this subject?

6 A. Yes.

7 Q. About when did those take place?

8 A. In the 2000 period.

9 Q. All right. First half of the year?

10 A. First, yes.

11 Q. First quarter maybe?

12 A. First quarter. It was I believe on the
13 first visit to the factory.

14 Q. To the factory in China?

15 A. Correct.

16 Q. Okay. So that -- that design change was at
17 least first discussed during the visit to the
18 Chinese factory?

19 A. Yes.

20 Q. Was it decided upon there or did the
21 decision come later?

22 A. I believe the decision was made there.

23 Q. Okay. And this was a design change then
24 that basically you and Zingula and Gallagher agreed
25 to and told the people at the factory, "Here's what

1 we want to do differently"?

2 A. We told Mr. Wong.

3 Q. Now, eventually, I take it, that ladders
4 were produced with these changes?

5 A. Correct.

6 Q. Did you do any testing?

7 A. We did testing at the facility.

8 Q. Which facility?

9 A. China.

10 Q. Well, were you there long enough that they
11 actually started making these braces while you were
12 there?

13 A. No.

14 Q. Okay. Then let me make sure my question is
15 clear.

16 Once you started -- Once the
17 factory started building product with these braces
18 rather than the cables, did you do testing on the
19 product with the braces?

20 A. No.

21 Q. So part of this quality control program
22 at -- that you had going at the Chinese factory did
23 not include testing of -- load testing then?

24 A. Well, we knew automatically that the steel
25 bars were 10 times stronger than the steel cable and

1 had no -- no place to where it would slip out of the
2 cable.

3 Q. All right. So you felt that the testing
4 wouldn't be necessary --

5 A. No.

6 Q. -- load testing wouldn't be necessary then?

7 A. We improved the product.

8 Q. Okay. The webbing straps -- Were webbing
9 straps included back in -- in '99?

10 A. No.

11 Q. All right. But they became an item that
12 was included in 2000?

13 A. Correct.

14 Q. What was the decision on why to add them?

15 A. Just keeping the ladder stable.

16 Q. All right. Whose idea was that?

17 A. That -- That idea came from Tom Gallagher
18 and I attending the TMA meetings at the TMA shows
19 and hearing the other tree stand manufacturers
20 saying there's a need for safety cross straps. We
21 both elected that -- to put them in, get them in.

22 Q. Okay. Was this also during the first
23 quarter of 2000 or did that happen later?

24 A. That pretty much all happened at the same
25 time of the -- of the steel bars.

1 Q. Okay. Now, we know then that Exhibit 4
2 came about because we have now added the steel
3 braces and the webbings.
4 A. Correct.
5 Q. You have to put them in since they're now
6 in the box, right?
7 A. Correct.
8 Q. Okay. And you've got an illustration on
9 there of what the steel braces look like so that
10 somebody understands what an Item I is?
11 A. Correct.
12 Q. Okay. Did you go to the same draftsman to
13 draw that illustration?
14 A. Yes, sir, I did.
15 Q. The same guy whose name we're going to
16 find?
17 A. We're going to try to do our best.
18 Q. Okay. As far as the wording, did you
19 change any wording because of the addition of the
20 webbing straps and the steel braces?
21 A. That, we did.
22 Q. Okay. What wording did you change?
23 A. I believe -- Well, I believe we added the
24 metal straps and putting in there the 12-foot
25 webbing. That's the only thing. But throughout, I

1 believe everything stayed pretty much the same other
2 than adding the parts to it --
3 Q. Okay.
4 A. -- and the wording for the parts.
5 Q. Okay. And the wording for the parts -- I
6 mean, obviously we see the H and the I and the
7 wording that tells the parts (indicating).
8 A. Correct.
9 Q. Okay. And since I'm looking at it upside
10 down, are there anything in here that talks
11 specifically about what to do with the steel braces?
12 A. No, it does not.
13 Q. All right. Is there anything in here
14 specifically that tells you what to do with the
15 webbing straps?
16 A. No, it does not, other than the photo.
17 Q. Okay. Why did you elect to not put wording
18 in about the steel braces?
19 A. At that point I couldn't answer that.
20 Q. Why did you elect not to put any wording in
21 about the 12-foot webbings?
22 A. At that point it was just get it in and the
23 wording didn't get up with the -- we just didn't do
24 the wording in time --
25 Q. Okay.

1 A. -- follow-up.
2 Q. Okay. Now, where is the picture for the
3 webbing? And if it's on the other page, feel free
4 to --
5 A. Well, you have webbing here in Item 4
6 (indicating). You have webbing here in the back of
7 the -- for helpful hints (indicating). And you have
8 the webbing shown exclusively on the front
9 instructions (indicating).
10 Q. Okay. Now, if we -- if we are to look at
11 Exhibit 4, we'll call the front page the one that
12 has the exhibit sticker 4 on it and it says BBK-117
13 (indicating).
14 A. Uh-huh.
15 Q. So on that page, on the left-hand side of
16 the page, there's a picture of a tree, and you're --
17 you're telling me there's two -- there's webbing
18 straps shown there (indicating)?
19 A. Correct.
20 Q. And then on the right-hand side of the
21 page, there's a bigger picture of a tree and there's
22 webbing straps shown, correct (indicating)?
23 A. Correct.
24 Q. And then on the second page of Exhibit 4,
25 the right-hand side, the upper left-hand corner of

1 the right-hand half of the page, there's another
2 picture of a tree with webbing (indicating)?
3 A. Correct.
4 Q. All right. Now, is that -- the pictures
5 then that we've just identified as showing the
6 webbing, is that the way the webbing strap is
7 supposed to go on?
8 A. Exactly.
9 Q. Now, that -- I may be showing my ignorance
10 here, but is that one strap or two straps that's
11 shown (indicating)?
12 A. That's two straps. It goes on one corner,
13 wraps around, ties to this one. This one goes
14 around the tree and ties onto that one (indicating).
15 Q. Okay. So the picture then actually depicts
16 two webbing straps. And if we look at the front
17 page, the bigger tree, we see, oh, halfway down the
18 ladder there's a strap on each side of the ladder
19 (indicating)?
20 A. Correct.
21 Q. If we look up near where the seat is, then
22 we see -- can see at least on one side a webbing
23 strap going up around the seat (indicating)?
24 A. Correct.
25 Q. All right. And so that's the -- that's the

1 visual depiction that you were intending to make
 2 for --
 3 A. For the two --
 4 Q. -- for the two straps?
 5 A. Correct.
 6 Q. Okay. So that I'm clear then, the
 7 illustra -- the draftsman, really, what he would
 8 have done for his part of Exhibit 4 is, first of
 9 all, he would have had to have drawn the picture,
 10 Item I, of the steel braces, right (indicating)?
 11 A. Correct.
 12 Q. And he would have added the webbing straps
 13 in the different places that we've talked about
 14 showing webbing straps (indicating)?
 15 A. Correct.
 16 Q. Did he do anything beyond those items?
 17 A. No, not that I believe. Those are the only
 18 two changes that we did.
 19 Q. All right. And then the wording, any
 20 wording changes, you took care of?
 21 A. Yes, sir, I did.
 22 Q. Did you kind of give him a copy of
 23 Exhibit 5, the old one, and tell him, "Here's what
 24 you need to change for this new one" (indicating)?
 25 A. Yes.

1 Q. And did you have the old one in front of
 2 you that you made the changes on for the new one
 3 (indicating)?
 4 A. Basically. I told him that we needed to
 5 add -- I laid the parts out. Actually, I took the
 6 parts to him in a box.
 7 Q. Okay. Now, as you were doing that --
 8 giving things to the draftsman and doing your own
 9 work, did you take a copy of -- then of the
 10 instructions that were in use and give him -- excuse
 11 me -- give him that one to work from?
 12 A. I don't believe I did. I believe he worked
 13 off his own file.
 14 Q. Did he keep one, you think, then?
 15 A. I think so. If -- If he still has it. It
 16 was in '98 and '99. That's quite some time ago.
 17 Q. All right.
 18 MR. SANDERS: And if he has a file,
 19 we'd like to get a copy.
 20 MR. PRINS: I would assume if he
 21 has one, he'll give it up to me without any fight.
 22 MR. SANDERS: Well, if he doesn't
 23 want to, then just tell us and we'll take care of
 24 it.
 25 MR. PRINS: We'll go from there.

1 I was also going to tell you, too,
 2 in regard to the entity, I don't know that there was
 3 any request specifically for this, but I can obtain
 4 the filings with the Texas Secretary of State's
 5 office and provide those to you showing the -- the
 6 creation dates of Limited and Inc.
 7 MR. SANDERS: I think we probably
 8 have them already.
 9 MR. PRINS: I think you might. But
 10 if you don't, let me know.
 11 MS. POWERS: I would like you to
 12 provide those documents, anything you have, so...
 13 MR. PRINS: Okay. I'll get a copy
 14 of them and send them out then.
 15 Q. (By Mr. Sanders) Once -- Once the draftsman
 16 got done with his part of the assignment to create
 17 Exhibit 4, did he -- I assume he gave that back to
 18 you, right?
 19 A. (Witness nods head up and down.)
 20 Q. That's a "yes"?
 21 A. Yes, sir. Sorry.
 22 Q. It doesn't bother me, but it's hard for
 23 her.
 24 A. I understand.
 25 Q. And then you added your part?

1 A. Yes.
 2 Q. Okay. What did you do after that?
 3 A. Sent it to Tom Gallagher.
 4 Q. And what happened after that?
 5 A. He approved it and we sent it over to CTI.
 6 Q. Okay. Did -- After that did you ever -- as
 7 you continued to get parts -- Well, let me start
 8 over so it makes sense.
 9 After you got into production for
 10 the 2000 year --
 11 A. Yes.
 12 Q. -- with this new design, okay, did -- did
 13 you get samples of those in so that you could see if
 14 they were, in fact, being built the way you told
 15 them you now wanted them built?
 16 A. At that point I don't -- I cannot remember
 17 honestly to answer that correctly.
 18 Q. Okay. Had it been your intent at least to
 19 do that?
 20 A. Yes.
 21 Q. Okay. And knowing how you operated your
 22 business, would you assume that if it was your
 23 intent to do that, that you probably followed
 24 through on it?
 25 A. Yes, I did.

1 Q. Okay. And when you did that, did you
2 know -- did you look through those instructions?

3 A. At that point I don't believe I did because
4 we were just looking -- we did not know we had any
5 issues with the instructions, so we followed up with
6 the tree stands, making sure that the safety cross
7 strap's in it. And I guess I'm -- I might have
8 overlooked that or I cannot answer that correctly.

9 Q. All right. At some point in time did you
10 ever look at instructions, either Exhibit 5 or
11 Exhibit 4, and determine that there was a numbering
12 of 1, 2 and 7?

13 A. That came from Cabela's notifying me that
14 we had a problem with the instructions. Customers
15 were calling and saying, "Hey, you have a typo."

16 Q. When did that happen?

17 A. Sometime in 2000.

18 Q. All right. So sometime in the year 2000 --
19 let's try and break it down by quarter again if we
20 can. Do you remember what quarter of the year?

21 A. It would have been in the first part of the
22 year after the corrections were made on this and the
23 other stands were being out the door (indicating).

24 Q. Okay.

25 A. We really --

1 Q. You were pointing one direction --

2 A. Okay.

3 Q. -- but she doesn't get that, so...

4 A. Okay. The exhibit -- if I'm not mistaken,
5 this is Exhibit --

6 Q. That's 4.

7 A. -- 4 (indicating). And -- And this is
8 Exhibit 5 (indicating).

9 The -- I do not believe Exhibit 5,
10 any of the instructions with the typo, were ever
11 brought to us at the time --

12 Q. Okay.

13 A. -- of having a problem (indicating).

14 In the year 2000, we started
15 getting calls that the instructions had a typo. So
16 at that point I believe that we did another
17 instructions for 2001, which is not here at this
18 time.

19 And it was all -- I believe it was
20 done by Cabela's and given to me and sent to CTI
21 because of that one issue of the -- making -- we
22 were -- every year we were doing more and more
23 improvements to instructions, verbiage, everything.

24 Q. Okay. So let's -- Again, we'll break that
25 down into pieces so we got it clear.

1 Sometime in the year 2000 -- and
2 we'll try and narrow it down in a moment, but
3 sometime during the year 2000, did BBK receive any
4 calls about a typo in the instructions?

5 A. That, I did.

6 Q. All right. About how many calls did you
7 get?

8 A. No more than four or five.

9 Q. Okay. And were these on ladders that had
10 been sold under the Cabela's name or ladders that
11 were sold under the BBK name?

12 A. Under the Cabela's name.

13 Q. All right. And basically people would just
14 call and say, "Hey, you got a typo in your
15 instructions"?

16 A. Correct.

17 Q. Okay. And to your knowledge, did Cabela's
18 get any calls like that in the year 2000?

19 A. I believe their customer service did say
20 it. And we went -- they went and checked the
21 instructions themselves, and that's where Tom says,
22 "I -- We've got a -- We've got an issue with the
23 instructions. It's a typo. But we need to -- we
24 need to watch this from here on out."

25 Q. Okay. So basically Gallagher told you --

1 A. Right.

2 Q. -- that somebody from customer service in
3 Cabela's had received some calls saying -- from
4 customers saying, "There's a typo in the
5 instructions"?

6 A. Correct.

7 Q. All right. And would this have been --
8 have been -- these calls have been spread across the
9 year 2000 at various points in time?

10 A. Yes.

11 Q. Okay. Did Mr. Gallagher tell you that he
12 was taking any action about that independent of
13 calling you and telling you about it?

14 A. No.

15 Q. Did you take any action in response?

16 A. Yes. I called Billy and said, "We've got
17 an issue with the instructions." And by that point,
18 all -- all the production ladders, all the orders,
19 had been shipped.

20 Q. For the year 2000?

21 A. For the year 2000, correct.

22 Q. Okay.

23 A. The '99 had come in. The -- Cabela's had
24 cut orders early for following year 2000. We
25 continued to do with the instructions with the

1 modifications done to get ahead of the curve.
 2 And then in the year 2000, we
 3 started getting the issue on the -- on the typo.
 4 And then I believe in 2001, they came out with their
 5 own instructions, which is --

6 Q. Okay. Let's take those a piece at a time
 7 then.

8 So we know that the -- the tree
 9 stand that had the webbing strap and the steel
 10 brace, that new design, those probably started
 11 shipping from the factory to Cabela's in, what,
 12 June-July of 2000?

13 A. Yes.

14 Q. All right. And those came with an
 15 instruction sheet that had the typo?

16 A. Correct.

17 Q. And you got calls and Cabela's, according
 18 to Gallagher, got calls about that typo?

19 A. Correct.

20 Q. And so sometime after that, during the year
 21 2000, you called Billy and said, "We got a typo
 22 issue"?

23 A. Correct.

24 Q. Okay. Nothing in writing with Billy. That
 25 was a phone call?

1 A. That was a phone call.

2 Q. All right. And did Billy tell you, "We'll
 3 take care of that"?

4 A. Yes.

5 Q. All right. And so now we're into -- now
 6 we're going to get into the year 2001.

7 A. Correct.

8 Q. Okay. And production is going to start
 9 sometime in 2001 for delivery in June or July of
 10 2001?

11 A. Correct.

12 Q. Did you ever check the instructions that
 13 came with the ones that were for delivery in June or
 14 July of 2001?

15 A. I believe we did.

16 Q. And were -- was that typo corrected?

17 A. Correct. It was in a different instruction
 18 manual.

19 Q. Okay. Let's stop there for a minute
 20 because I remember you did say something.

21 Other than a typo being corrected,
 22 were the instructions that came out in 2001
 23 different than what we see in Exhibit 4
 24 (indicating)?

25 A. Yes, sir.

1 Q. All right. I'm going to show you what has
 2 been marked as Exhibit 6. We know those came about
 3 sometime, but I don't know that I have a time frame.

4 So I want to know is Exhibit 6 the
 5 instructions that started being used in 2001 or did
 6 those come later on?

7 A. I believe these came in 2001.

8 Q. Okay. So it's your belief that for the
 9 product that started shipping in the summer of 2001,
 10 the instruction sheet in use was Exhibit 6
 11 (indicating)?

12 A. I'm sorry. I was looking at this.

13 Q. I'm sorry.

14 A. What's the question?

15 Q. You go ahead and look. When you're done
 16 looking, tell me.

17 A. I was viewing this because I'm -- I'm --
 18 I'm comparing the safety videotape and I'm trying to
 19 figure out when --

20 Q. Take your time. That's fine.

21 A. I believe we started this in -- in 2001.
 22 Yes. '99 (indicating). 2000 (indicating). 2001
 23 (indicating). And there's another one out there
 24 somewhere.

25 MR. PRINS: Why don't you do that

1 again. Say exhibit numbers, Albert, real quick.

2 THE WITNESS: This is Exhibit 6 in
 3 2001 (indicating). Exhibit --

4 Q. (By Mr. Sanders) 4.

5 A. -- 4 in 2000 (indicating). Exhibit 5 in
 6 '99 (indicating).

7 Q. Okay. Exhibit Number 6, who drafted it?

8 A. Both Cabela's and I.

9 Q. All right. Were the illustrations done by
 10 your draftsman?

11 A. We took -- Actually, at this point digital
 12 was coming to effect and we put digital pictures of
 13 the ladder with the safety cross straps. We showed
 14 how -- the operation of the safety cross straps all
 15 done on digital.

16 I believe the digital work was done
 17 with my -- my assistant manager, Bob Kinder. The
 18 verbiage came between the -- Cabela's and ourself,
 19 and then finally approved by Cabela's for production
 20 and printing.

21 Q. Okay. I want to -- I'm going to come back
 22 to some of these again in a minute, but I want to
 23 switch to two separate different subjects.

24 Labeling on the product itself.

25 Was there any kind of labeling other than the name

1 Cabela's?
 2 A. Yes.
 3 Q. What?
 4 A. CTI model number.
 5 Q. Anything else?
 6 A. That's it.
 7 Q. Okay. What one might call warnings. Were
 8 there any kind of warnings on the product itself?
 9 A. On the box.
 10 MS. POWERS: Just a minute. During
 11 what period of time are we talking about?
 12 Q. (By Mr. Sanders) Okay. Let's go back.
 13 Let's talk about labeling.
 14 At any time from 1999, once CTI
 15 started producing the product, up until 2004 when
 16 you were no longer -- Was it 2004 when you stopped
 17 buying product from CTI?
 18 A. Yes. The beginning of 2004.
 19 Q. Okay. During that entire time frame, was
 20 there ever any labeling other than the name Cabela's
 21 and the CTI model number on the product itself, on
 22 the ladder itself?
 23 A. No. Not that I -- On -- On the metal part?
 24 Q. On the metal parts.
 25 A. No. I don't think there was any labeling

1 on it.
 2 Q. Okay. On the box, was there any labeling
 3 other than the name Cabela's and information about
 4 Cabela's and the CTI model number?
 5 A. I believe it had some warning issues,
 6 warning labels on the box.
 7 Q. Okay. We're going to talk about warnings,
 8 but labeling other than warnings.
 9 A. No, sir.
 10 Q. Now let's go to warnings.
 11 On the metal, the stand itself,
 12 between '99 and 2004, were there any warnings on the
 13 metal or the stand?
 14 A. Yes. There was a yellow warning label,
 15 small.
 16 Q. That said?
 17 A. I believe -- I can't remember. It's a
 18 small label.
 19 Q. When did it first start appearing?
 20 A. At the very beginning.
 21 Q. At the very beginning?
 22 A. Yes, sir.
 23 Q. And who drafted the language that was on
 24 that yellow warning label?
 25 A. We used it verbatim that came on the Wahoo

1 ladder.
 2 Q. All right. So basically you took whatever
 3 was on the Wahoo ladder and just said "We're going
 4 to use the same warning label"?
 5 A. Correct.
 6 Q. And as we sit here today, you just don't
 7 remember what that language was?
 8 A. No, sir, I don't.
 9 Q. Did it change -- Did that language change
 10 at any time up through 2004 on the ladder itself?
 11 A. I believe at the -- on the ladder itself,
 12 we started putting a bigger warning label, one piece
 13 with a triangle warning, and don't do this, don't do
 14 that. There was a -- It's been a while, but I
 15 believe there was a big white warning label on
 16 them --
 17 Q. When did --
 18 A. -- at that point.
 19 Q. When did you start doing that?
 20 A. I want to say it was in 2003.
 21 Q. Okay. And who wrote the language for that?
 22 A. I can't recall.
 23 Q. Well, do you recall, was it you or was it
 24 Cabela's --
 25 A. I --

1 Q. -- or was it both of you?
 2 A. I believe we took the warnings from the
 3 instructions and put them on the label, these
 4 warnings right here (indicating).
 5 Q. Okay. Now, we're talking, first of all,
 6 Exhibit Number 6, correct (indicating)?
 7 A. Correct.
 8 Q. And the first page -- Can you tell me what
 9 portion of the first page of Exhibit 6 contains a
 10 warning that you believe went on a label -- went on
 11 the stand itself beginning in about 2003?
 12 A. If I'm not mistaken, it was these items
 13 right here (indicating).
 14 Q. And there's Items 1 through 10?
 15 A. 1 through 10.
 16 Q. And there's two number 10's?
 17 A. 10's, correct.
 18 Q. Okay. And you believe then that beginning
 19 in approximately 2003, a warning label went on the
 20 stand itself that contained each of those items
 21 (indicating)?
 22 A. I believe.
 23 Q. And about what portion of the stand do you
 24 think it went on?
 25 A. It either went on the front here or on the

1 ladder section (indicating).

2 Q. On a rail?

3 A. No. On the ladder. On the side -- On the
4 side bars. Not on the -- Not on the footrest. You
5 can say rail, yes.

6 Q. Yeah. On a side rail?

7 A. On the side rail.

8 Q. All right. So -- And what was the decision
9 as to why to do that?

10 A. Cabela's and I were trying to conform to
11 TMA, which is a -- an organization that was formed
12 to help inform tree stand manufacturers of upcoming
13 problems that are occurring in litigations for
14 informing and everything.

15 So we were just improving the
16 ladder and instructions and verbiage and putting a
17 safety warning -- I mean a safety video into it. We
18 were -- We were doing everything we could to inform
19 the public.

20 Q. Now, on the box that this came in, were
21 there any warnings placed?

22 A. I want to say yes, there was, but I can't
23 recall how much warnings there were on the box of
24 Cabela's Pine Ridge ladder.

25 Q. All right.

1 THE COURT REPORTER: Pine Ridge?

2 THE WITNESS: Pine Ridge. At that
3 time I believe they changed the name. They turned
4 it to a Pine Ridge label.

5 Q. (By Mr. Sanders) If I were to ask you what
6 the wording was, you wouldn't remember that today?

7 A. No, sir. Because I -- I didn't have my
8 hands on the box every day. I did not see it.

9 Q. Okay. Now, just so I can see where --
10 Earlier you had told me that you thought Exhibit 5
11 was 1999, Exhibit 4 was 2000, and Exhibit 6 was 2001
12 (indicating).

13 A. Correct.

14 Q. And I just want to see if, as you think
15 about this more, Mr. Gallagher believed that
16 Exhibit 6 didn't start until 2002. Is that a
17 possibility?

18 A. No. Because we started putting -- we
19 started putting the safety video, I believe, in
20 2001. In fact, that was myself, Cabela's was --
21 along with API were the first to start putting
22 safety videos in. And we were still allowed to put
23 cross strap -- I mean a chest harness in at that
24 time.

25 So in 2004 -- I want to say

1 Exhibit 6 was done in 2001 (indicating).

2 Q. Okay. And you are -- Are you kind of
3 basing that on when you think the video was first
4 used?

5 A. Correct.

6 Q. So if we were able to determine
7 independently somehow that the video didn't come
8 about until 2002, would that indicate then --

9 A. That this would be a 2002. But --

10 Q. Okay.

11 A. -- I've been putting videos in for three or
12 four years.

13 Q. Okay. So in any event, Exhibit 6 you're
14 putting 2001 on because of the video, and that's
15 basically the key element in your mind?

16 A. Correct.

17 Q. Okay.

18 MS. POWERS: Can we go off the
19 record for just a minute?

20 MR. SANDERS: Sure.

21 (Recess taken.)

22 Q. (By Mr. Sanders) All right. I want to ask
23 you briefly, design of the tree stand that was
24 manufactured by the Chinese plant.

25 Now you've told me the difference

1 is that it was -- the ladder part itself was in
2 pieces to be assembled as opposed to one --

3 A. No. You're wrong.

4 Q. No? Okay. Let's take it a piece at a time
5 then.

6 When you got them from the Mexico
7 factory, was the ladder all in one solid piece or
8 did you have to assemble those pieces?

9 A. You had to assemble the ladder.

10 Q. The ladder you had to assemble?

11 A. Correct.

12 Q. Okay.

13 A. The three sections you put in together.

14 Q. Okay. And then when you got the product
15 from Mexico where the -- you'll have to identify the
16 parts, but I see a part that has a footrest
17 (indicating)?

18 A. Correct.

19 Q. And then above the footrest is the seat
20 (indicating)?

21 A. Correct.

22 Q. The part that had the seat on it, was it
23 all one solid piece with the part that had the
24 footrest --

25 A. Correct.

1 Q. -- from Mexico?
 2 A. Correct.
 3 Q. So if we were looking at Exhibit 5, it
 4 shows, for instance, a -- a curved piece of metal
 5 that connects to the seat, and that in itself, that
 6 curved piece of metal, goes onto the piece of metal
 7 holding the footrest (indicating)?
 8 A. That was all one piece.
 9 Q. So that was all one piece coming from
 10 Mexico (indicating)?
 11 A. Correct.
 12 Q. And so the difference from the Chinese
 13 factory was -- was making those where you had to
 14 assemble the footrest piece onto the seat piece
 15 (indicating)?
 16 A. Correct.
 17 Item G in the parts list and the
 18 contents of the box was modified by the Chinese to
 19 be able to reduce the size of the box in half.
 20 Q. All right. Other than that change, was
 21 there any change between the -- what was made in
 22 China and what was made in Mexico?
 23 A. No.
 24 Q. Okay. And is it fair to say that that
 25 change you've just identified to me was a change

1 that you discussed in advance with Mr. Wong and
 2 agreed to?
 3 A. Correct.
 4 Q. All right. And, in fact, I think you told
 5 us you load tested it --
 6 A. That, I did.
 7 Q. -- after you got it.
 8 A. That, I did.
 9 Q. Okay. Now, I want to show you --
 10 MR. SANDERS: Do you guys remember
 11 what the last exhibit number was?
 12 MS. POWERS: 7.
 13 MR. SANDERS: So we would be on 8?
 14 MS. POWERS: Uh-huh. I believe so.
 15 MR. ZEIDLER: Yeah. That's what
 16 I've got, too.
 17 MR. SANDERS: Okay.
 18 Q. (By Mr. Sanders) I'm going to show you what
 19 we'll mark as Exhibit 8.
 20 (Deposition Exhibit Number 8
 21 marked.)
 22 MR. SANDERS: And for other
 23 counsel -- I'm sorry. I didn't make extra copies,
 24 but this is CTI 1 if you want to see what he's
 25 doing.

1 Q. (By Mr. Sanders) I'm going to show you
 2 Exhibit 8 and ask you to take a moment to look at
 3 that. And when you're done looking, tell me and
 4 then I'll ask you questions.
 5 A. Okay. And your question pertaining?
 6 Q. Yeah. The question is, first of all, do
 7 you recognize this document?
 8 A. Yes, I do.
 9 Q. And is this an e-mail from you or from BBK
 10 Enterprises, Inc., to Billy Wong?
 11 A. Correct. It is.
 12 Q. And it's dated July 14th of '99?
 13 A. Correct.
 14 Q. So I guess we were using e-mail back then.
 15 A. Okay.
 16 Q. Okay. And on here then there was a message
 17 by e-mail from Billy to you?
 18 A. Uh-huh.
 19 Q. And what I want to understand -- There are
 20 questions. And then in cap -- after each question,
 21 there is something in capital letters that appears
 22 to be an answer to the question.
 23 A. Uh-huh.
 24 Q. Do you see what I'm referring to
 25 (indicating)?

1 A. Uh-huh.
 2 Q. Are those things in capital letters your
 3 response to the question?
 4 A. I told him he could do the same as the
 5 ladder that came from Mexico.
 6 Q. Okay. But my -- just so that I understand
 7 what this is, what I'm wanting to know is did Billy
 8 send you an e-mail with these questions and what you
 9 sent back was his e-mail with capital letter answers
 10 next to his questions?
 11 A. Yes.
 12 Q. Okay. So that's how I would read that then
 13 is that his question is in the smaller case and your
 14 answer to the question is in all caps?
 15 A. Correct.
 16 Q. Okay. And when he -- when he had here,
 17 "Are we going to make the connection parts of the
 18 ladder same as Mexico or can we do the same as
 19 sample we sent you," you answered, "You can do same
 20 as sample sent."
 21 A. Correct.
 22 Q. That's -- That was when you were referring
 23 to you got the sample and you told him this is fine
 24 the way it is?
 25 A. Right.

1 Q. Okay. Now, he says, "About the label, we
2 really need the negative of the print to make the
3 label. Can you send us the negative?"

4 And you say, "We do not have
5 negative. We just use business card."

6 What was that all about?

7 A. That was for the Cabela's label that goes
8 on the box. And basically they can just xerox
9 the -- the Cabela's label and blow it up and put it
10 on the box. It was a black and white.

11 Q. Okay.

12 A. To make it simple.

13 Q. Now, this was July of 1999, which is
14 consistent with the time frame you were telling me
15 you first started talking with Billy, right?

16 A. Correct.

17 Q. And then you told us about this meeting in
18 August where Cabela's said "We need more," right?

19 A. Yes.

20 Q. And you talked to Billy about "Can you meet
21 the demand" and all of that, right?

22 A. Correct.

23 Q. And then at some point after that, he told
24 you "yes," and you sent him the instructions that
25 were to be used, right?

1 A. Correct.

2 Q. And what I want to do is show you what
3 we'll mark as Exhibit 9.

4 (Deposition Exhibit Number 9
5 marked.)

6 Q. (By Mr. Sanders) And I should ask, back at
7 that point in time at least, did BBK have a
8 telephone number of (210) 590-4080?

9 A. That's our fax.

10 Q. That's your fax number back then. Okay.
11 And Arla was your secretary?

12 A. Correct.

13 Q. So I'm going to show you Exhibit 9 then and
14 ask you if this is the fax that you sent to Billy
15 with the instructions?

16 And you can check the fax numbers
17 at the top of each page to confirm that.

18 MR. ZEIDLER: Is this CTI 3, Steve?

19 MR. SANDERS: It is.

20 MR. ZEIDLER: Okay.

21 THE WITNESS: I'm going to have to
22 say yes, it is.

23 Q. (By Mr. Sanders) And you notice it says
24 numbers 1, 2 and 7, doesn't it, sir?

25 A. Yes, it does. But at this -- at this time

1 I'm going to hold my innocence because I know this
2 looks bad on my part, but at no given time did we
3 have 3 for 7.

4 Q. Well, did you think that somebody perhaps
5 sent a sheet to Mr. Wong that had the numbers 1, 2
6 and 7 from your fax machine back in 1999?

7 A. That's a possibility because it shows it
8 right here (indicating).

9 Q. Right.

10 And that's -- might be an
11 explanation as to how Exhibit 5 and Exhibit 4 turned
12 out with numbers 1, 2 and 7, wouldn't it
13 (indicating)?

14 A. Possible.

15 Q. I next want to show you what we'll mark as
16 Exhibit 10.

17 (Deposition Exhibit Number 10
18 marked.)

19 Q. (By Mr. Sanders) There's a CTI number on
20 that. Will you tell the counsel here what we're
21 looking at?

22 A. CTI000066.

23 MR. PRINS: 66.

24 Q. (By Mr. Sanders) Okay. Take a moment to
25 look at that, sir. And when you're done, my

1 question will be tell me what that is.

2 A. This is kind of a modification to a stand
3 that Billy and I were working on for a cover over a
4 13-foot tripod. And this was a -- a stand that
5 Cabela's had forwarded to me to get a quote on.

6 And the other page here shows of a
7 stand that -- that I was building at the time and
8 wanted to put a cover on my stand.

9 Q. Do any of those have anything to do with
10 the 15-foot ladder stand that we're here about?

11 A. The -- On Page 1 of Exhibit -- it's so
12 black I cannot -- I cannot --

13 Q. It's not a good copy, I agree with that.

14 A. It's not a good copy.

15 Page 2 on the Exhibit 067 doesn't
16 pertain to the ladder.

17 The only thing that pertains to
18 the -- on Page 3 of the exhibit is the buckles
19 that -- No. I take that back. The buckles were for
20 the SS Lounger.

21 And on the back page, it's
22 basically the tripod that we have for BBK. And I
23 really can't tell you what the bottom right-hand
24 corner of the first page is, but this has nothing to
25 deal with the ladder stand in question.

1 Q. All right. The next thing is Exhibit 11.
 2 MR. SANDERS: And, Counsel, this is
 3 CTI 25.
 4 (Deposition Exhibit Number 11
 5 (marked.)
 6 Q. (By Mr. Sanders) And, again, after you've
 7 looked through it, my question is -- the first
 8 question will be does this have anything to do with
 9 the 15-foot ladder stand that we've been talking
 10 about?
 11 A. No, it does not.
 12 Q. I'm not going to bother to mark this yet
 13 just in case it has nothing to do with the 15 foot.
 14 It's CTI 28 through CTI 44.
 15 Can you look through this and tell
 16 me if this has anything to do with the 15 foot? If
 17 it does not, then we'll be done with it.
 18 A. No, it does not.
 19 Q. Okay.
 20 A. Let me go through this and make sure. This
 21 is the SS Lounger.
 22 Q. The actual 15-foot ladder that's the
 23 subject of this lawsuit, the one that Mr. Gray fell
 24 from --
 25 A. Yes.

1 Q. -- have you had a chance to see it in
 2 person?
 3 A. No, sir, I have not.
 4 Q. Okay. So when there was an inspection of
 5 it, you did not attend that inspection?
 6 A. No, sir, I did not.
 7 Q. All right. Did anyone attend on your
 8 behalf other than perhaps your attorney?
 9 A. Yes. I believe so.
 10 MR. PRINS: Our lawyer up there,
 11 Alan. Alan did.
 12 MR. SANDERS: Okay. I knew Alan
 13 did. But I'm wondering did any --
 14 MR. PRINS: No.
 15 MR. SANDERS: -- anybody other than
 16 a lawyer?
 17 MR. PRINS: No other
 18 representatives of BBK.
 19 THE WITNESS: There was --
 20 Q. (By Mr. Sanders) People from Cabela's, I
 21 know.
 22 MR. PRINS: Cabela's expert.
 23 THE WITNESS: Cabela's expert.
 24 Correct.
 25 MR. SANDERS: Right.

1 Q. (By Mr. Sanders) Okay. Other than
 2 information from your lawyer -- because I don't want
 3 to ask you about what a lawyer has told you. Don't
 4 try and tell me what a lawyer has told you. Okay?
 5 Other than that, have you been
 6 given any information as to what happened or may
 7 have happened to cause this accident?
 8 A. Yes, sir.
 9 Q. Okay. And, again, I don't want to know
 10 what a lawyer has told you, so don't go telling me
 11 that.
 12 Tell me what you know other than
 13 what a lawyer has told you.
 14 A. Well, I understand that the man put the
 15 ladder up on a tree on the -- on the wrong side with
 16 a sloping ground. I do know that the man had used
 17 the ladder six or seven times prior to that. I do
 18 know that the man put the ladder up with one safety
 19 cross strap on it instead of two. I do know that
 20 there was no ladder defect. It did not fail due to
 21 quality control production. And I do know that the
 22 product was used and human error caused the
 23 accident.
 24 MS. POWERS: I'm going to move to
 25 strike that answer and also your question, although

1 I am a bit late, as calling for speculation on his
 2 part. There's no foundation for him to give that
 3 testimony.
 4 MR. SANDERS: Your objection is
 5 overruled, Counsel.
 6 But -- and I'll just note for the
 7 record that that answer was totally responsive to
 8 the question. So if the question was appropriate,
 9 then the answer was appropriate.
 10 MS. POWERS: Well, the question --
 11 Well, I'm objecting to the question also.
 12 MR. SANDERS: I understand that.
 13 Q. (By Mr. Sanders) Is it -- Now you're a
 14 person that's been in the business of selling tree
 15 stands for quite some time, right?
 16 A. That, I have.
 17 Q. Is it fair to say that you've had some
 18 experience with tree stands?
 19 A. Very much so.
 20 Q. Are you a hunter?
 21 A. Yes, I am.
 22 Q. Have you used tree stands?
 23 A. Yes, sir.
 24 Q. How many years have you been using tree
 25 stands?

1 A. Probably 22 years.
2 Q. So you're a tree stand user for 22 years,
3 as well as having been in the business for a number
4 of years of selling them?

5 A. Yes, sir.

6 Q. And you've evaluated different tree stands
7 over the years?

8 A. Yes, sir.

9 Q. And you've evaluated the design and
10 manufacture of -- in general terms, of the tree
11 stand that we're talking about here, the Cabela's 15
12 foot?

13 A. Yes, sir.

14 Q. And based on that and what information you
15 have about this accident, have you reached the
16 conclusion that it was simply mistake in use or
17 misuse by Mr. Gray that brought about his accident?

18 MS. POWERS: I object to the
19 question. It's calling for speculation. He is not
20 here to testify as an expert witness in this case.
21 He had -- You have laid no foundation for the
22 information he has regarding the incident. He
23 hasn't spoken to Mr. Gray. I object.

24 Q. (By Mr. Sanders) You can still answer the
25 question. If you don't remember it, she'll read it

1 back to you.

2 A. I don't remember it.

3 MS. POWERS: Calling for an expert
4 opinion also.

5 MR. SANDERS: Read it back for him,
6 please.

7 THE COURT REPORTER: "And based on
8 that and what information you have about this
9 accident, have you reached the conclusion that it
10 was simply mistake in use or misuse by Mr. Gray that
11 brought about his accident?"

12 MS. POWERS: Same objection. And
13 I'll add that that is calling for a legal
14 conclusion.

15 THE WITNESS: Okay. I feel that
16 the gentleman, Mr. Gray, misused this ladder.

17 MR. SANDERS: All right. I have no
18 more questions.

19 Whoever is next, have at it. You
20 can sit here if you'd like to since he's got the
21 hearing issue and you need to speak up.

22 Are you going next then or is Ed?

23 MS. POWERS: I'm going next. Yeah.

24 I think I --

25 MR. SANDERS: Go ahead.

1 MS. POWERS: I think I'll be fine
2 here. Thank you.

3 EXAMINATION

4 BY MS. POWERS:

5 Q. Have you ever spoken to Dan Gray?

6 A. No, ma'am, I have not.

7 Q. Have you ever spoken to a witness in the
8 case by the name of Mike Maygar?

9 A. No, ma'am, I have not.

10 Q. Have you reviewed the deposition
11 transcripts of either of those gentlemen?

12 A. Yes, ma'am, I have.

13 Q. When did you review those deposition
14 transcripts?

15 A. When I -- When they were presented to me,
16 probably three or four months ago.

17 Q. Who else have you spoken to regarding the
18 incident, the injury that took place?

19 A. No one. Just read the depo.

20 Q. All right. Now, you weren't there, is that
21 correct, when this incident took place on
22 September 11th?

23 A. No, ma'am.

24 Q. You have expertise with tree stands; is
25 that right?

1 A. Yes, ma'am.

2 Q. I think you stated in your Answers to
3 Interrogatories that you have -- that you're an
4 expert in the use and assembly and safety of tree
5 stands; is that correct?

6 A. Well, not an expert. I follow all the
7 TMA -- upcoming TMA standards and rules and safety
8 for tree stands.

9 Q. What is your educational background?

10 A. I have just a twelfth grade education.

11 Q. What work experience did you have before
12 forming BBK Enterprises?

13 A. I was a painting contractor for 30 years.

14 Q. During the time you were a painting
15 contractor, did you have any involvement with tree
16 stands at all?

17 A. Yes, ma'am. I was dabbling with ladder
18 stands and tripods.

19 Q. What do you mean you were dabbling with
20 them?

21 A. I was converting conventional ladder stands
22 that you would purchase at Home Depot or anywhere
23 and converting them into a ladder stand and trying
24 to find welders that would build me my own tripods
25 so I could -- I could go hunting with my own

1 products.

2 Q. When you were converting these conventional
3 ladder stands, was that to use the products for your
4 own use?

5 A. Personal use.

6 Q. And during what year was that when you
7 started doing that?

8 A. That was in '95, '96.

9 Q. Is that how you became interested in going
10 into the business of hunting equipment?

11 A. Yes, ma'am.

12 Q. Did you work for any companies or have a
13 business on your own having to do with sale of
14 hunting equipment before you formed BBK Enterprises?

15 A. No, ma'am.

16 Q. You were a member of the Tree Stand
17 Manufacturers Association?

18 A. Yes, ma'am, I am.

19 Q. When did you first become a member?

20 A. I believe I joined in either 2000 -- No.

21 Yeah. 2000 or 2001.

22 Q. Do you attend meetings with that
23 organization?

24 A. Yes, ma'am, I do.

25 Q. Before you joined the organization, did you

1 attend any meetings?

2 A. Yes, I did.

3 Q. When did you first attend a meeting?

4 A. I believe I started attending the first
5 meeting in '99 and 2000.

6 Q. What kind of information do you receive at
7 those meetings? What do they talk about?

8 A. They talk about upcoming problems that the
9 members, the board members, are -- are experiencing.
10 They were starting to push into more informing
11 the -- the end user of the product. There was more
12 of a push to go into instructions.

13 And then the -- at that time the
14 big push was changing from a chest strap harness
15 that's inside this instructions to a four point
16 harness that was put in the TMA standards and TMS 04
17 in 19 -- in 2004.

18 Q. What is the overall goal of the
19 organization?

20 A. Providing the end user the most safest
21 stand that they can have in -- in -- in sales, in
22 the public stream.

23 Q. All right. And that was true in 1999 also
24 when you first attended meetings?

25 A. Yes, ma'am.

1 Q. And at these meetings you would receive
2 tree stand safety information?

3 A. Information, yes, ma'am.

4 Q. Did they give you information about
5 statistics about injuries using tree stands?

6 A. No. They would just basically say that
7 we -- you know, the industry needs to move in this
8 direction and, you know, we need to form a
9 testing -- get testing firms to start testing
10 product where it's available for everybody that
11 manufactures product.

12 Q. All right. Did you, during your membership
13 with the TMA beginning in 2000 or 2001, receive
14 literature from that organization?

15 A. No, ma'am.

16 Q. Did you get e-mails? Were you on a list
17 serve, any kind of source of information?

18 A. No. I wasn't -- I wasn't a member at that
19 time. I was an outsider looking in, so I went to
20 the meetings at the TMA shows.

21 Q. All right. Do you currently, as a member,
22 receive literature? Are you on a list serve,
23 anything like that from TMA?

24 A. I'm on the board.

25 Q. What's your position on the board?

1 A. Secretary.

2 Q. How long have you been on the board?

3 A. I've been on the board -- This is my third
4 year.

5 Q. When you first started BBK Enterprises
6 in -- I believe you said 1998?

7 A. I would say it was -- it was formed in
8 1990.

9 Q. Oh, I'm sorry.

10 A. But --

11 Q. 1990?

12 A. Yes, ma'am. The corporate -- The papers, I
13 believe, were done in 1990.

14 Q. Okay. When you just first started BBK
15 Enterprises in 1990, did you go to any -- attend any
16 meetings with any other organizations?

17 A. No, ma'am.

18 Q. Did you review any literature on the
19 manufacture of tree stands?

20 A. No, ma'am.

21 Q. All right. How did you come about your
22 knowledge of how to design -- about the design and
23 manufacture of tree stands?

24 A. In -- With my entrepreneurship and my
25 current business that I had in construction and